

OPENING STATEMENTS

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1 STATE OF MINNESOTA DISTRICT COURT
 2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
 3 - - - - -
 4 The State of Minnesota,
 5 by Hubert H. Humphrey, III,
 6 its attorney general,
 7 and
 8 Blue Cross and Blue Shield
 9 of Minnesota,
 10 Plaintiffs,
 11 vs. File No. C1-94-8565
 12 Philip Morris Incorporated, R.J.
 13 Reynolds Tobacco Company, Brown
 14 & Williamson Tobacco Corporation,
 15 B.A.T. Industries P.L.C., Lorillard
 16 Tobacco Company, The American
 17 Tobacco Company, Liggett Group, Inc.,
 18 The Council for Tobacco Research-U.S.A.,
 19 Inc., and The Tobacco Institute, Inc.,
 20 Defendants.
 21 - - - - -
 22 TRANSCRIPT OF PROCEEDINGS
 23 VOLUME 5, PAGES 843 - 1032
 24 JANUARY 26, 1998
 25

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1 P R O C E E D I N G S.
 2 THE COURT: Good morning.
 3 (Collective "Good morning.")
 4 THE COURT: On January 23rd, 1998, the
 5 defendants, with the exception of Liggett Group,
 6 filed a motion to strike the venire and/or jury
 7 before the Honorable Kenneth Fitzpatrick of Ramsey
 8 County. Each of the 24 members of the panel was
 9 questioned by the court and asked whether each would
 10 base their decisions only on the evidence presented
 11 in court, apply the law as the court instructed, set
 12 aside their own opinions and be fair and impartial.
 13 The panel should understand, as the court stated,
 14 that what we are attempting to do here is select 12
 15 people who will be fair and openminded to the
 16 evidence as presented during the trial, and what we
 17 need is for you, the jurors, to examine your
 18 conscience and answer the question fairly and
 19 honestly. To be a fair juror, you have to be able to
 20 say to yourself I'm willing to have an open mind,
 21 I've made no pre-judgments, and I'm willing to listen
 22 to all of the evidence that they present to me, and
 23 after I've heard all of that evidence, then I will
 24 be -- I will make a decision based on the evidence
 25 that's presented to me. Your decision here must be

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1 based only on what is presented to you in this
 2 courtroom.
 3 Each of the 24 members of the panel agreed to do

4 so. Now the fact that some of the jurors viewed with
5 some skepticism the defendants' position that
6 cigarettes are not addictive and that smoking does
7 not cause disease is not a sufficient basis to strike
8 the venire or jurors for cause. It would certainly
9 not be grounds for removal of a juror if a juror were
10 skeptical when a litigant in a proceeding argued a
11 position that the sun sets in the east.

12 Parenthetically, the court notes with more than
13 a passing interest the fact that the defendants, who
14 claim that five jurors do not favor their position,
15 having six peremptory strikes, deliberately and
16 intentionally chose not to strike those jurors.

17 The motion of some of the defendants to strike
18 the venire or jury is denied.

19 Call the jury.

20 (Jury enters the courtroom.)

21 THE CLERK: Please be seated.

22 THE COURT: Good morning, members of the
23 jury.

24 (Collective "Good morning.")

25 THE COURT: I read to you what the case

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1 involves and I'm going to go over that one more time
2 for your benefit and allow you to keep this in mind
3 as the case proceeds.

4 This is an action by the state of Minnesota and
5 Blue Cross Blue Shield of Minnesota, the plaintiffs
6 in this case, to recover health-care expenses
7 plaintiffs have paid to treat diseases caused by
8 smoking and defendants' misconduct. Plaintiffs also
9 seek other relief. The plaintiffs claim that the
10 defendants, contrary to their promises,
11 misrepresented and concealed damaging evidence that
12 they knew about the health hazards of smoking.
13 Plaintiffs also claim that the defendants illegally
14 targeted adolescents in advertising and promotional
15 campaigns and manipulated cigarettes to exploit the
16 addictiveness of nicotine.

17 Plaintiffs have asserted a number of legal
18 claims. They claim that defendants violated the duty
19 defendants assumed to advance and protect the public
20 health and to research the health hazards of
21 cigarettes and report those findings to the public.
22 Plaintiffs also claim that the defendants' conduct
23 violated Minnesota consumer protection laws and
24 antitrust laws and have unjustly profited from their
25 conduct.

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1 The defendants in this case are Philip Morris
2 Incorporated, R. J. Reynolds Tobacco Company, Brown &
3 Williamson Tobacco Company, B.A.T Industries P.L.C.,
4 the British-American Tobacco Company, Ltd., B.A.T
5 U.K. & Export Ltd., Lorillard Tobacco Company, The
6 American Tobacco Company, Liggett Group, Inc., The
7 Council for Tobacco Research U.S.A., Inc., and The
8 Tobacco Institute. The defendants deny engaging in

9 any wrongful conduct. The defendants specifically
10 deny that they misrepresented or concealed evidence
11 relating to the alleged health hazards of smoking or
12 that they targeted adolescents in advertising or
13 promotion campaigns. They deny that they manipulated
14 the nicotine content of cigarettes to addict smokers.
15 The defendants also deny that they violated any legal
16 duty or otherwise violated Minnesota's consumer
17 protection or antitrust laws. The defendants deny
18 that plaintiffs are entitled to recover under any of
19 the legal theories asserted by the plaintiffs. In
20 addition, the defendants assert that the plaintiffs
21 have suffered no damages as a result of any alleged
22 wrongdoing by the defendants.

23 Let me give you a few directions with regard to
24 your actions during the course of this trial. To
25 begin with, we will have, naturally, one party going

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1 first and a second party going after that. Because
2 of that, you should keep an open mind as to the
3 evidence that's presented to you. Wait until all of
4 the evidence is in, all of the evidence is complete.
5 If one side would take a position, and not having
6 heard the other side, sometimes you may tend to make
7 a decision without having heard that other side. So
8 keep that mind open until all of the evidence has
9 been presented to you by the plaintiffs and by the
10 defendants.

11 In addition, do not discuss the evidence that
12 you hear amongst yourselves. What happens sometimes
13 is you have a tendency to take a position, having
14 heard part of the evidence, and then it might be
15 difficult for you to change your position if
16 subsequent evidence should be received. So avoid
17 discussing the merits of the case and the evidence
18 amongst yourselves. You'll have plenty of time to
19 discuss the case after the case is complete and when
20 you retire to the jury room to deliberate.

21 Obviously, as I indicated to you previously, do
22 not watch any television, do not read any newspapers
23 or any types of forms of communication with respect
24 to this trial during the pendency of the trial. Do
25 not discuss the case with any outside person, and if

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1 there is any person who contacts you and attempts to
2 discuss this and continues to do so after you've told
3 them you do not wish to discuss it, you should
4 contact the court. Further, do not do any
5 independent research. You bring to us what you have
6 now. Do not go home and try and find out additional
7 evidence that would have any effect on the case
8 itself.

9 Now let me give you just a very brief outline of
10 how we'll be proceeding here. We'll have, first of
11 all, what we call an opening statement by the
12 plaintiffs, the purpose of which is to outline the
13 evidence that the plaintiffs intend to present to you

14 regarding their claims. When that opening statement
15 is complete, the defendants may then choose to have
16 an opening statement or they could make it at a later
17 time. I expect the defendants will make an opening
18 statement right after the plaintiffs.

19 When that's finished, then we will proceed with
20 the evidence in the case, first of all by the
21 plaintiffs. The plaintiffs will submit to you their
22 evidence that they have regarding their claims. When
23 that is complete, the defendants will then have an
24 opportunity to submit their evidence.

25 When the defendants complete that, we'll have
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1 what we call final arguments, first of all by the
2 defendant and then by the plaintiff; that is,
3 analyzing and summarizing the case from their
4 respective points of view. That will be followed by
5 the instructions that the court will give you; that
6 is, the law that you're to apply to the evidence that
7 you have heard in this case.

8 Counsel, proceed.

9 MR. CIRESI: Good morning, ladies and
10 gentlemen. As I told you earlier, my name is Mike
11 Ciresi and I'm one of the lawyers representing the
12 state of Minnesota and Blue Cross and Blue Shield,
13 together with my colleagues sitted at -- seated at
14 the first table. We're all from the same law firm
15 here in the Twin Cities. Name of the firm is Robins,
16 Kaplan, Miller & Ciresi.

17 I'm now going to make an opening statement to
18 you, and during the course of that statement I'll
19 show you some documents of the defendants. And
20 they'll go on the monitors, you'll see them on either
21 side of the jury box; there's also a large screen
22 over here. So that don't think there's something
23 different on each monitor, they're all the same. But
24 we put them before the parties to make sure that no
25 matter what way you're looking, get comfortable,

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1 you'll have an opportunity to see the document that
2 is being talked about at that time.

3 This case began in August 1994, shortly after
4 the chief executive officers of the major U.S.
5 tobacco companies testified under oath in Congress
6 that cigarette smoking was not addictive. To this
7 day all of the defendants, save one, Liggett, still
8 publicly deny that cigarette smoking is addictive and
9 causes disease. These public statements were and are
10 false and the evidence in this case will prove that.

11 Over the last three and one-half years we have
12 obtained, through the legal process, millions of the
13 defendants' secret documents which had never before
14 seen the light of day. These documents will bring to
15 life the decades-long illegal conduct of the
16 defendants through their own written words; yet in
17 this courtroom you will see these defendants deny and
18 try to explain away those words.

19 Every day three thousand of our youth start
20 smoking. Every year over 400,000 individuals die
21 from smoking-related diseases, a staggering number
22 that is one out of every six deaths in the United
23 States. In Minnesota alone, smoking causes more than
24 six thousand deaths a year from diseases, including
25 lung cancer, heart disease, emphysema and bronchitis.

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1 This human carnage, of which only the dead, the
2 afflicted and their families feel the full personal
3 consequences, inflicts an enormous economic burden of
4 health-care costs on the state of Minnesota and Blue
5 Cross and Blue Shield.

6 The defendants in this case insured a captive
7 market for this inevitable march of death and disease
8 by intentionally attracting children and adolescents
9 and addicting them to a product which kills and
10 causes disease when used as intended. The defendants
11 have long known the addictive nature of nicotine
12 which thwart and compromise smokers' ability to
13 exercise their desire and choice to quit.

14 The evidence will show that three starkly
15 descriptive words, deceit, exploitation and greed,
16 have been and are indeed today the guiding beacons
17 which have directed the cigarette industry in over
18 four decades of intentional conspiratorial and
19 unlawful conduct. The exposure of that conduct in
20 this trial will be based not on speculation,
21 conjecture or opinion by outsiders, but will be
22 disclosed through the defendants' own documents which
23 they have been forced to produce in this litigation.

24 The purpose of this lawsuit is to hold the
25 industry accountable, accountable for its own illegal

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1 actions. This, the evidence will show, is a case of
2 corporate irresponsibility in which an entire
3 industry, in a half-century-long combination of
4 conspiracy, of willful and intentional wrongdoing,
5 violated the consumer protection and antitrust
6 statutes of the state of Minnesota. These defendants
7 falsely promised the American people that they would
8 undertake a special duty to protect the public health
9 and to conduct research and disclose complete
10 information about smoking and health. They further
11 promised America and its public health authorities
12 that they considered this a basic and paramount
13 responsibility of conducting their business, and they
14 asked the public to rely on their integrity and
15 truthfulness. Yet, these same defendants over that
16 half century intentionally chose to engage in a
17 unified campaign of deceit and misrepresentation by
18 suppressing their own knowledge concerning the
19 addictive nature of nicotine and the severe health
20 risks tobacco presents to smokers. They chose to do
21 all that in the name of profit and to preserve their
22 way of doing business.

23 In short, ladies and gentlemen, the evidence

24 will show that this was an industry which conceived
25 of a strategy of deceit and, through an arrogance of
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1 power, promoted and fortified that sanctuary of
2 deceit for the sole purpose of achieving their
3 objective of the continuous recruitment of teenagers
4 to a product which they knew was addictive and fatal.
5 Indeed, you will learn that the industry did not
6 consider its product to be tobacco at all, but rather
7 nicotine, which they intentionally and internally not
8 only called an addictive drug, but secretly
9 manipulated to maintain its addictive power. Yet,
10 except for Liggett, which has finally admitted the
11 addictive nature of nicotine, not one of the
12 defendants, the other defendants in this case, have
13 to this day disclosed all that they know about that
14 drug.

15 This industry mutually set upon a course of
16 conduct which results each year in an annual death
17 toll which equals the number of lives America has
18 lost in all of the wars of this century. Each year.

19 At the conclusion of the testimony, we will ask
20 you, in accordance with the law and evidence, to
21 examine and evaluate the defendants' conduct and hold
22 them accountable by awarding damages for health-care
23 costs in the amount of one billion seven hundred
24 seventy million dollars to the state of Minnesota and
25 Blue Cross and Blue Shield. These costs were paid by

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1 the state and Blue Cross for people suffering from
2 lung cancer, chronic obstructive pulmonary disease,
3 coronary heart disease, and other diseases which have
4 been identified by the Surgeon General of the United
5 States as being caused by smoking.

6 The central inquiry we will ask you to focus on
7 during this trial is what these defendants knew about
8 the hazards of smoking, what they knew, when they
9 knew it, and what they did with that information.
10 This case is not about individual smokers or
11 non-smokers, this case is not about the prohibition
12 of the sale of a legal product, this case is about
13 the illegal sale of a legal product. This case is
14 about the conduct of the industry and how this
15 industry chose, intentionally chose, to violate the
16 laws of the state of Minnesota.

17 At the end of this case, Judge Fitzpatrick will
18 instruct you on those laws and how to apply them to
19 the evidence you will hear in this courtroom.

20 The cigarette industry in America is highly
21 concentrated and controlled by these defendants. Six
22 of the defendants have controlled the manufacture of
23 cigarettes in this country for decades, they are
24 Philip Morris Incorporated, which has in excess of 42
25 percent of the market, R. J. Reynolds Tobacco

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1 Company, which has in excess of 29 percent of the
 2 market, Brown & Williamson Tobacco Corporation has
 3 approximately 12 percent of the market, Lorillard
 4 Tobacco Company, which has approximately seven
 5 percent of the market, The American Tobacco Company,
 6 which is now owned by Brown & Williamson, which also
 7 has about seven percent of the market, and finally
 8 Liggett Group, which has about three percent or less
 9 of the market. Other defendants in this case are
 10 three related companies which you will hear referred
 11 to as the BAT Group from England, and they include
 12 the parent company of the Brown & Williamson
 13 cigarette manufacturing company. These related
 14 companies are B.A.T P.L.C., British-American Tobacco
 15 Company, Ltd., which we may refer to as BATCo, and
 16 B.A.T U.K. & Export, Ltd. You may hear us refer to
 17 them as BATUKE. This corporation family of related
 18 companies, which as I said includes Brown &
 19 Williamson, worked in concert with the rest of the
 20 defendants in conspiring to withhold information on
 21 the health hazards of smoking in the United States.
 22 Indeed, the operations of what I will refer to as the
 23 BAT group created a network in which the British
 24 companies did much of the scientific research for
 25 Brown & Williamson, which, contrary to the company's

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1 obligations, was never disclosed to the American
 2 public. In fact, the corporate headquarters of the
 3 parent company in England issued the marching orders
 4 on the profound issues of smoking and health which
 5 are involved in this lawsuit.

6 The remaining two defendants in this case are
 7 the tobacco industry's two trade groups, The Council
 8 for Tobacco Research, which is CTR. When they were
 9 first formed they were called TIRC, Tobacco Institute
 10 Research Committee, so whenever you hear CTR or TIRC,
 11 we will be referring to the same company and the same
 12 defendant. The other industry trade group is called
 13 The Tobacco Institute.

14 It is the story of these companies and their
 15 control of the entire cigarette industry in this
 16 country that will be exposed through the evidence in
 17 this trial.

18 Let us now go back in time to the early 1950s
 19 when the industry joined together because of alarm
 20 that its way of doing business was threatened. On
 21 December 15th, 1953, the first year of president
 22 Eisenhower's administration, the chief executive
 23 officers of the leading tobacco companies convened a
 24 secret meeting at the Plaza Hotel in New York City
 25 with Hill & Knowlton, their public relations firm.

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1 The meeting was called as a result of recently
 2 published medical studies linking cigarette smoking
 3 with cancer, specifically lung cancer. The stock
 4 prices of the companies had declined and the chief

5 executive officers wanted to sponsor a public
6 relations campaign which was entirely pro-cigarette
7 and positive in nature. At the meeting the chief
8 executive officers told Hill & Knowlton they did not
9 want to sponsor new research which would provide
10 definitive answers to the charges linking cigarettes
11 with lung cancer.

12 Hill & Knowlton, their public relations agents,
13 devised a plan to accomplish the chief executive
14 officers' public relations aims. Their plan was
15 based on one overriding concern. After listening to
16 the CEOs, Hill & Knowlton characterized the CEOs' PR
17 concern as follows -- and this is Hill & Knowlton's
18 words, not mine -- memorialized with regard to that
19 meeting: "There is only one problem, confidence and
20 how to establish it, public assurance and how to
21 create it, and perhaps a long interim when scientific
22 doubts must remain." That long interim, ladies and
23 gentlemen, during which the industry has steadfastly
24 tried to create doubts, has lasted to this day.

25 To address the problem, Hill & Knowlton devised
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1 a strategy of public relations which the industry
2 adopted. That strategy was based on the following
3 principles, again in the words of Hill & Knowlton,
4 and I quote: "The very first problem is to establish
5 some public confidence in the industry's leaders
6 themselves so that the public will believe their
7 assertions of their own interest in the public
8 health." Problem two: "To reassure the public and
9 still instinctive fears in this interim when
10 definitive facts for giving complete assurance are
11 still lacking, when scientific doubts must remain,
12 and when new unfavorable information can emerge from
13 some laboratory at any time to act as a bombshell on
14 the whole tobacco industry. In the meanwhile the
15 industry tried to pooh-pooh the unfavorable data so
16 Hill & Knowlton had to determine how to validate this
17 message of assurance, and so they talked to the men
18 in the tobacco companies. Here is what they wrote
19 back in 1953.

20 The men talked to in the cigarette companies
21 tend to, A, "Think occasionally in terms of trying to
22 smear the personal responsibility, motives,
23 judgments, or techniques of Wynder and others
24 supporting him." Dr. Wynder was a scientist who had
25 published the medical literature that caused the

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1 stock prices to plummet and which led to this meeting
2 at the Plaza Hotel. So what Hill & Knowlton found
3 was this is what the men talked to in the cigarette
4 companies, their CEOs, tended to think. C, the men
5 talked to in the cigarette companies tend to
6 "Overlook the fact that in this particular instance,
7 the stakes for the public are even larger than for
8 the tobacco manufacturer. For the public, an issue
9 touching the deepest of human fears and instincts is

10 involved -- the issue of uncontrollable disease and
11 death. Hence cigarette companies might not readily
12 be forgiven if their approach to this problem is
13 stemmed only from eagerness to protect their
14 earnings, and if they twisted the research of medical
15 science, paren, which seeks to save men, close paren,
16 into a device to save stockholders. There is no
17 precedent where a great industry has been forced to
18 face such grave issues.

19 "In the past, industry has given little twists
20 to the facts of science, to convert them into sales
21 propoganda, without much risk. The cigarette
22 industry has indeed been doing this for years. We
23 can therefore readily understand its assumptions that
24 the same techniques will work now, in devising
25 propoganda. But it is highly important to note that

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1 the deep issues of life and death that are now
2 involved make highly doubtful the question as to
3 whether the familiar techniques can be relied on.
4 The stakes are too large; the penalties for losing
5 could be too great."

6 What else did the cigarette CEOs tend to do?
7 They tended "to assume that agents like science
8 writers can be guided and encouraged to disseminate
9 special interpretations of current findings, in ways
10 that would blame lung cancer on everything else but
11 cigarettes -- or (even better) in ways that would
12 throw doubt on the validity of statistics showing
13 great increases in lung cancer. If the issue were
14 merely coughs or sore throats or worst, this might
15 work. There is serious question as to whether
16 anyone -- after due reflection -- would consider such
17 a course useful for long-term purposes in the present
18 circumstances."

19 As the trial unfolds, ladies and gentlemen, you
20 will see these defendants, through deceit,
21 exploitation and greed, did deliberately embark on
22 the course of conduct that was said by Hill &
23 Knowlton, the one that they should not follow. The
24 industry blamed lung cancer and other -- other fatal
25 diseases on alternative causes. They twisted the

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1 facts, and while doing so, steadfastly refused to
2 conduct the type of biological research within their
3 own laboratories which would enable them to answer
4 the life and death questions raised by the selling of
5 their product. Biological research is research on
6 animals which would have studied the relationship
7 between smoking and disease. You will see over the
8 course of years this twisting of the facts led to
9 complete denials until they started talking about
10 risk factors -- you'll hear about that during the
11 course of this litigation -- but the evidence will
12 show that constantly they attempted to undermine the
13 scientific validation that smoking causes serious
14 diseases, and they did it in concert and they did it

15 intentionally. They took this action, course of
16 action, although they knew it was their legal duty to
17 know what could be known about their product. As an
18 excuse for failing to conduct research, they claimed
19 they had financed those who were competent to conduct
20 such research, claiming that they themselves
21 internally were not competent. You will see from the
22 defendants' own documents that these representations
23 are false and the real reason they didn't undertake
24 appropriate internal research was to preserve their
25 freedom to criticize, undermine and twist the facts

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1 of those who did.

2 The publication of the medical studies in the
3 early '50s concerning cancer and smoking presented a
4 choice to the industry. They had a choice: Should
5 they take the high road and disclose the information
6 they already knew and had proof of in their files and
7 conduct appropriate biological scientific studies
8 into whether cigarette smoking caused disease, or
9 should they provide a sanctuary for smokers by
10 implying that the charges were not scientifically
11 valid? The industry chose darkness while publicly
12 claiming they were pursuing the truth.

13 On January 4th, 1954, shortly after this meeting
14 at the Plaza Hotel in New York, the industry issued
15 what they call a Frank Statement to Cigarette Smokers
16 which ran in the newspapers of every city in the
17 United States that had a population in excess of
18 50,000 people, including St. Paul, Minneapolis and r
19 Duluth. This unprecedented action was again the
20 creation of the industry's public relations firm Hill
21 & Knowlton. In this Frank Statement, a copy of which
22 is on this board and also on the monitors, the
23 industry voluntarily undertook a special
24 responsibility and duty to the people of America, and
25 they said, "We accept -- We accept an interest in

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1 people's health as a basic responsibility, paramount
2 to every other consideration in our business." Two,
3 "We believe the products we make are not injurious to
4 health." Three, "We are pledging aid and assistance
5 to the research effort in all phases -- all
6 phases -- of tobacco use and health. This joint
7 financial aid will of course be in addition to what
8 is already being contributed by individual companies.

9 "For this purpose, we are establishing a joint
10 industry group consisting initially of the
11 undersigned."

12 And if you look at the bottom of this document,
13 you'll see five of the cigarette manufacturers who
14 are defendants in this courtroom, The American
15 Tobacco Company, Brown & Williamson, Lorillard,
16 Philip Morris and R. J. Reynolds Company. So this --
17 those people were forming a group which was going to
18 be known as the Tobacco Industry Research Committee.

19 That's the one defendant I mentioned to you

20 earlier, TIRC, which is now known as the CTR.
21 They've changed their name from TIRC to CTR.
22 They also said, "We always have and always will,
23 we always have and always will cooperate closely with
24 those whose task it is to safeguard the public
25 health." One of those is the state of Minnesota.

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1 Contrary to these promises, the public could not
2 even count on this industry to disclose what they had
3 in their own files at the time they issued that Frank
4 Statement. For example, a Mr. Teague, a research
5 scientist at R. J. Reynolds Company, ten months
6 before the Frank Statement was issued, ten months
7 before the meeting at the Plaza Hotel, had
8 recommended to management of RJR that management
9 recognize the health problem and its implications to
10 the cigarette industry and that positive research
11 action be planned and initiated without delay.
12 Indeed, after a survey of cancer research, he
13 concluded, and I quote -- his words, not mine -- "The
14 increased incidence of cancer in the lung in man
15 which has occurred during the last half century is
16 probably due to new or increased contact with
17 carcinogenic stimuli. The closely paralleled
18 increase in cigarette smoking has led to the
19 suspicion that tobacco smoking is an important
20 etiologic" -- which means a cause -- "factor in the
21 induction of primary cancer of the lung. Studies of
22 clinical data tend to confirm the relationship
23 between heavy and prolonged smoking and incidence of
24 cancer in the -- of the lung. Extensive, though
25 inconclusive testing of tobacco substances on animals

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1 indicates the possible presence of carcinogenic
2 agents in those substances." Mr. Teague's quote from
3 RJR. The Frank Statement issued ten months later:
4 "We believe the products we make are not injurious to
5 health." False.

6 RJR was not alone in 1954 in refusing to
7 disclose information locked in its files which was
8 directly related to the health and deep issues of
9 life and death which affected smokers. For example,
10 Brown & Williamson's laboratory in 1952 had isolated
11 and identified a highly carcinogenic aromatic
12 hydrocarbon in tobacco smoke named benzpyrene. The
13 industry's pledge to assist and aid research effort
14 into all phases of tobacco use and health was an
15 empty promise. Instead, they undertake a campaign to
16 publicly deny and undermine the risks of smoking.
17 Their front organization in this campaign was the
18 Tobacco Industry Research Committee, now CTR.

19 The defendants will say that they conducted
20 extensive research through CTR by renowned
21 scientists. They'll put up big boards with the
22 universities that they gave funding to, some here in
23 Minnesota, across the country. However, as you
24 listen to all the evidence about those studies from

25 the CTR, the evidence will show that in large measure
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1 their research was not directed to finding answers to
2 smoking-and-health issues. To this day, CTR, their
3 public front, their research, their objective
4 organization that was to tell all the truth, to this
5 day it refuses to publicly admit that cigarette
6 smoking is addictive and causes serious health
7 problems and death. In fact, in 1994, at those same
8 congressional hearings that the CEOs testified at 50
9 years after the Frank Statement in the sworn
10 testimony in Congress, the head of CTR denied that
11 cigarettes caused disease.

12 It is no wonder that CTR has been the subject of
13 internal derision from the industry sources
14 themselves. Indeed, this organization, established
15 by the industry to safeguard the public health, has
16 been used to undermine the medical information from
17 independent scientists that was shedding light on the
18 causal link between smoking and health. The true
19 purpose of CTR is best stated by one of its officials
20 who said, "CTR is the best and cheapest insurance the
21 tobacco industry can buy, and without it the industry
22 would have to invent CTR or would be dead." Their
23 words, not mine.

24 At the same time, CTR was using -- was being
25 used by the industry to deny and undermine the

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1 hazards of cigarette smoking. The defendants'
2 internal documents paint an entirely different state
3 of knowledge with regard to what they knew, when they
4 knew it, and what they did with that information.
5 One document, written 40 years ago but not disclosed
6 until this litigation, demonstrates that these
7 defendants knew and accepted that smoking caused lung
8 cancer. On the board you'll see it's entitled
9 "REPORT OF VISIT TO THE USA AND CANADA, 17th of April
10 through 12th of May 1958" by three BATCo officials,
11 Mr. Hentley, Mr. Felton and Mr. Reid. British
12 tobacco conducted this extensive trip to the United
13 States where its scientists visited a number of
14 defendants in independent research laboratories at
15 Johns Hopkins Hospital, New York University,
16 Sloan-Kettering Institute, the National Cancer
17 Institute and other educational institutions. They
18 also visited a number of the companies and visited
19 CTR itself. Companies included American Tobacco
20 Company, Liggett, Philip Morris and TIRC, which we
21 know is CTR.

22 Reporting back on the trip, senior scientists
23 from BATCo stated -- again I quote, their words, not
24 mine -- this is in 1958, four years after the Frank
25 Statement? Quote, "With one exception, the

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1 individuals whom we met believed that smoking causes
2 lung cancer if by 'causation' we mean any chain of
3 events which leads finally to lung cancer and which
4 involves smoking as an indispensable link." That is
5 an admission that these defendants, except Liggett,
6 have not to this day stated publicly. 1958, 40 years
7 ago.

8 The document continues with regard to CTR. "We
9 found general acceptance of the view that the most
10 likely means of causation is that tobacco smoke
11 contains carcinogenic substances present in
12 sufficient quantity to provide lung cancer when
13 acting for a long time in a sensitive individual."

14 Then they went to contrast what was going on at
15 CTR as opposed to what was going on in the rest of
16 the scientific community. I again quote, "The main
17 effort outside TIRC" -- that again is TIRC/CTR --
18 "therefore has switched from trying to confirm the
19 direct causal hypothesis to trying to find biological
20 test systems which will allow active substances in
21 smoking to be identified."

22 The BATCo scientists also pointed out that
23 Liggett & Myers stayed out of CTR at that point
24 because they originally doubted the sincerity of
25 TIRC's motives and believed that the organization was

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1 too unwieldy to work efficiently. In other words,
2 one of these defendants doubted the sincerity of the
3 scientific organization that was supposed to protect
4 the public health and which was set up by these
5 companies. BATCo reported that Liggett & Myers in
6 1958 remained convinced that its misgivings were
7 justified and that in Liggett's opinion, TIRC had
8 done little if anything constructive and that TIRC's
9 constantly reiterated not-proven statements in the
10 face of mounting contrary evidence has thoroughly
11 discredited TIRC and the Scientific Advisory Board.
12 You see the initials SAB. They set up a Scientific
13 Advisory Board of eminent scientists, and you'll find
14 out that was controlled as we march through this
15 evidence. But Liggett said they were thoroughly
16 discredited and that the SAB, Scientific Advisory
17 Board of the TIRC, is supporting almost without
18 exception projects which are not directly related --
19 or related directly to smoking and lung cancer.
20 Their words, ladies and gentlemen of the jury, not
21 mine.

22 BATCo found out why the individual defendant
23 companies and CTR didn't want to conduct appropriate
24 biological research. At page seven, again, their
25 words, not mine, "Finally our attention was drawn to

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1 some of the very real policy and public relation
2 problems which might arise if the industry seems to
3 be engaged in biological testing. In the U.S.A.
4 medical opinion on the likely role of smoking in the
5 causation of lung cancer has not become

6 consolidated." What they are talking about is the
7 scientific community -- there wasn't
8 unanimity -- hasn't become consolidated in anything
9 like the extent to which it is in the United Kingdom,
10 and TIRC is very much concerned not to encourage any
11 such consolidation or to do anything which might
12 reduce any further its degree of freedom to criticize
13 and comment. For that reason alone it is improbable
14 that TIRC would engage overtly," in other words, they
15 would admit that they were engaging, "in biological
16 research with tobacco smoke." Their words, ladies
17 and gentlemen, not mine. This was the scientific
18 organization of the industry set up in 1954 to
19 protect the public health. Their paramount
20 responsibility, as they coined it.

21 The case for the industry's campaign of deceit
22 regarding smoking and health could not be made
23 clearer than this document we have just shown you.
24 Think of it. A short four years after the industry
25 said in the Frank Statement that it was going to

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1 safeguard the public health, this document shows that
2 the majority of individuals which BATCo surveyed
3 accepted that cigarette smoking caused cancer in the
4 human lung. That opinion was given that in view of
5 its chemical composition, it would indeed be
6 surprising if cigarette smoke was not carcinogenic.

7 As you deliberate, you'll have the opportunity
8 to look at these documents in their entirety so that
9 you'll be assured that they are put in the proper
10 context. You'll be able to read it all. The
11 individuals being referred to in this con -- in this
12 document were not just those outside the industry,
13 but as you saw, they were also scientists from
14 American Tobacco, Liggett & Myers, Philip Morris and
15 CTR itself. Yet, despite that almost universal
16 opinion, the industry continued and continues to this
17 day to deny that cigarette smoking causes health
18 problems.

19 The Frank Statement. "We believe the products
20 we make are not injurious to people's health."
21 False.

22 The Eisenhower administration passed the torch
23 to the Kennedy administration and six years passed
24 since the Frank Statement was issued to the American
25 public. During that period of time the evidence

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1 continued to accumulate in the defendants' files that
2 smoking was a cause of lung cancer and other major
3 illnesses. Cigarette smoke was analyzed by the
4 defendants and found to contain numerous carcinogens,
5 yet they continued their strategy to deceit and deny.

6 In 1964 a seminal event occurred with regard to
7 smoking and health. The Surgeon General of the
8 United States issued its 1964 report on smoking and
9 health which concluded that cigarette smoking was
10 causally related to lung cancer and one of the most

11 important causes of chronic bronchitis in the United
12 States. 1964, ten years after the Frank Statement,
13 ten years after the information in their own files,
14 six years after the 1958 trip report of BATCo where
15 they knew that smoking caused cancer:

16 The Surgeon General's report reported that in
17 comparison to non-smokers, average smokers of
18 cigarette had a 900- to 1,000-fold increased risk of
19 developing lung cancer and heavy smokers a 2,000
20 increased risk. Despite the medical evidence
21 contained in the Surgeon General's report, the
22 industry continued its policy of deceit and denial.
23 This position was made despite the urges of some
24 employees in the industry that the industry change
25 its public relations campaign and accept the report's

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1 findings on face value since little basis for
2 disputing findings of the Surgeon General were
3 available.

4 For example, on February 18th, 1964, Dr.
5 Wakeham, the scientific director at Philip Morris,
6 circulated a review of the Surgeon General's report
7 to a number of executives at Philip Morris, including
8 its president. Title was "SMOKING AND HEALTH,
9 SIGNIFICANCE OF THE REPORT OF THE SURGEON GENERAL'S
10 COMMITTEE TO PHILIP MORRIS INCORPORATED," and the
11 distribution list includes these officials, including
12 their president. And what does Philip Morris say
13 internally in 1964? "The Research Center has made an
14 initial examination of the report of the Surgeon
15 General's advisory committee on smoking and health
16 with the view to its proper influence on Research
17 Center program and formulation of technical advice to
18 Philip Morris Management. The statement -- This
19 statement summarizes those preliminary views.

20 "The onus of proof has been moved by the report
21 from its usual position with the industry's accusers
22 to the tobacco industry itself." Six years after
23 they knew themselves that smoking caused cancer.
24 "Meeting this challenge affords Philip Morris a
25 splendid opportunity to gain a competitive edge

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1 through effective technical activity. Positive
2 programs to cure ills cited in this report, whether
3 real or alleged, are recommended, as little basis for
4 disputing the findings at this time has appeared.
5 Among those programs which deserve increased
6 corporate support" -- this is the report to
7 management, including the president -- "which deserve
8 increased corporate support are expansion of the
9 Research Center knowledge through intelligence effort
10 in epidemiology, bioassay, lung cancer research, et
11 cetera, and liaison with the medical school."

12 On page two Dr. Wakeham goes on, "Health impact
13 will surely be an important, perhaps the most
14 important, basis for competition in the industry in
15 the next few years. Competitive breakers" -- I'm

16 sorry. "Competitive pressures suggest a breakup of
17 the common front approach of the industry through TI
18 and TIRC. While R. J. Reynolds continues to advocate
19 a joint front, sit tight, status quo approach, paren,
20 it has the most to lose from any change in status
21 quo, others like American and Liggett & Myers,
22 sanguine to improved competitive positions, show
23 signs of bolting and have capitalized with their new
24 products on early reactions to the report. The
25 greater the longer term market impact of the report,

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1 the more intense will there be health competition,
2 which is to say technical competition, among major
3 tobacco companies."

4 The report also stated that "No evidence existed
5 to indicate a smoking threshold, below which -- below
6 which no harmful effects occur." In other words,
7 these companies could not say their product was ever
8 safe when used as intended.

9 Dr. Wakeham here was suggesting that there be
10 competition to developing healthier products, there
11 be health competition, information got out, these
12 people compete in accordance with the laws of the
13 state of Minnesota. The evidence will show that they
14 didn't compete, that they suppressed information,
15 that they violated the antitrust laws of the state.

16 Despite Dr. Wakeham's suggestion, neither Philip
17 Morris nor the rest of the defendants abandoned their
18 anti-competitive, common-front approach that they had
19 so carefully erected and nourished over the years.
20 In fact, for decades the defendants had what was
21 called a gentlemen's agreement not to conduct
22 internal biological research, the very type suggested
23 by Dr. Wakeham, which would establish the link
24 between smoking and disease and allow the companies
25 to develop a safer cigarette.

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1 Part of the discovery from this case is taking
2 depositions, which is sworn testimony of people. Dr.
3 Wakeham's deposition was taken, and on this issue
4 here is what he said:

5 "Question: What's the type of research that you
6 understood there was an understanding that the
7 cigarette companies would not be doing in-house?

8 "Answer: Studying a relationship which might
9 exist between smoking and diseases, such as were
10 tabulated in the Surgeon General's report."

11 The reason for that agreement, as we will show
12 you by their documents and by Dr. Wakeham's own
13 testimony, is explained by a 1965 memorandum prepared
14 by a lawyer for American Tobacco which shows why the
15 company rejected its scientist's request for
16 facilities to conduct biological research. This is a
17 remarkable document of admissions which was not pried
18 loose from the grips of the defendants until a few
19 weeks ago. This document captures the essence of the
20 entire industry's approach to scientific research

21 with regard to smoking and health from the time of
22 the issuance of the Frank Statement right up to the
23 present date. Indeed, when you look at this document
24 in its entirety, you will see that that was their
25 conduct before the issuance of the Frank Statement.

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1 This is a confidential memorandum prepared by a
2 lawyer from one of the defendants law firms,
3 Chadbourne & Parke. Janet Brown was her name. The
4 title of it is, "CONFIDENTIAL MEMORANDUM TO MR.
5 HETSKO RE CONFERENCE WITH MESSRS. HARLAN AND HARLOW
6 ON WEDNESDAY, AUGUST 25, 1965 AT THE COMPANY LAW
7 LIBRARY." Mr. Hetsko was the general counsel or the
8 highest lawyer at American Tobacco, the head of the
9 law department. Mr. Harlow was the research director
10 of American, and Mr. Harlan was at scientist. And
11 what had happened was Mr. Harlow had written to the
12 general counsel saying they were going to set up
13 biological research. Now of course there was an
14 agreement that that not be done, but he was going to
15 set it up. So that's the background as this memo
16 came, and now Ms. Brown is going to meet the research
17 director and she references in the very first
18 paragraph the purpose of the meeting. "I opened with
19 the explanation that we were there at your request.
20 Our only purpose was to explore with them, first, the
21 background, purposes and proposed modus operandi of
22 the postulated 'biological' program which you had
23 only recently learned about, and second, to review
24 some of the most fundamental problems a program of
25 the nature indicated in Mr. Harlow's memorandum to

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1 you would pose for the company in its public, medical
2 and legal positions in the health controversy."

3 And she then goes on to state what happened at
4 the conclusion of her meeting. "At the conclusion of
5 our conference Harlow stated the opinion that the
6 program contemplated would make the company's past
7 and current position in the health field
8 'untenable'. Harlan thought" -- he's the research
9 director -- "Harlan thought that "we'll have to give
10 it up." Harlow ultimately stated that while the
11 program was important and he wanted very much to do
12 it, he would certainly not want to do anything that
13 "has an impact on the company's position or if it
14 makes that position any less sound than it now is."
15 Once again, ladies and gentlemen, their words, not
16 mine.

17 On page seven there's an explanation of what
18 this program was going to be for and the two reasons
19 for it. "Two prime motives engendered the move to
20 institute a company biological research program. One
21 was deep dissatisfaction with the conduct of
22 experimental work by independents in this area."
23 Remember back to the 1958 trip report, they were
24 saying they would fund these things externally to
25 other independent laboratories, then of course they

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1 could always criticize them, undermine them. Here's
2 one of their own scientists that was saying that
3 there was deep dissatisfaction with the conduct of
4 outside experimental work. "The other -- the other
5 reason was the need for commercial security in the
6 development of new products. If they did undertake
7 their paramount responsibility and did try to develop
8 safer products, these gentlemen wanted to protect the
9 confidentiality of that, and they felt they could do
10 it better if that was done inside. They would be
11 able to protect the confidentiality more if it was
12 being done at American Tobacco rather than by some
13 independent laboratory." So that was their two
14 reasons for this biological program.

15 The document questions then -- and you'll have
16 an opportunity to read these -- how a biological
17 program will be perceived or characterized by
18 interested persons outside the company, whether
19 friend -- gentlemen's agreement -- other tobacco
20 companies, or foe, regulators, the public. It
21 concludes that such a program would be perceived as a
22 cancer research program into certain questions of the
23 relationship of smoking to human cancer.

24 One might ask: Isn't that the responsibility of
25 this industry? The question is answered by the

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1 author of the report who states as follows: "When
2 the company asserts competence to conduct its own
3 biological research into certain aspects of human
4 health it opens for jury evaluation the question
5 whether it acted reasonably in not instituting
6 biological research long before now. Substantial
7 scientific literature extending back over many
8 decades has asserted a great variety of pathological
9 effects from the use of tobacco." And then they cite
10 some of those medical studies. "A variety of
11 cancers, pulmonary and circulatory diseases have long
12 been claimed to be tobacco linked. Lung cancer,
13 emphysema, heart and peripheral circulatory disease
14 have already become subjects of suits.

15 "If the company can now inform itself respecting
16 biological effects of smoking, it will be argued that
17 it could and should have done so in all these areas,
18 years ago. Ample funds were at the company's
19 disposal. Researchers with M.D. degrees were
20 available to devise, conduct and evaluate experiments
21 on animals and men. Laboratory facilities for such
22 work could easily have been provided. What has been
23 found by independent scientists over the years, it
24 will be argued, could have been found long since by
25 the manufacturer whose primary responsibility it was.

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1 The question will be raised, for jury resolution,

2 whether a reasonably prudent manufacturer capable of
3 conducting biological research would not have
4 instituted biological testing programs in the 1920s,
5 or the 1930s, or the 1940s, eras in which, as
6 evidenced by the Haag, Larson, Silvette book, red
7 flags of warning respecting serious health questions
8 were being raised in the scientific literature. It
9 will be argued that, if such a program was not
10 institute earlier, it should at least have been begun
11 in 1950 to 1953, with publication of the four
12 retrospective studies showing association with lung
13 and other cancers; or in 1953, with the publication
14 of the Wynder mouse-painting experiments" -- Wynder
15 is the one who was mentioned about twisting the facts
16 back in the Hill & Knowlton document which I showed
17 you earlier. He did the experiments in '53 and it
18 was published. That's what led to that meeting at
19 the Plaza Hotel. And here they're saying -- "or in
20 1953, with publication of the Wynder mouse-painting
21 experiment, or in 1954, with publication of the firm
22 Hammond-Horn report. What about in 1954, with the
23 publication of the Frank Statement, or in 1957, with
24 publication of the study group report on smoking and
25 health? Why were such programs not instituted, at

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1 least, in 1958, with publication of the final
2 Hammond-Horn report, or in 1959, with the publication
3 by the Surgeon General of an official statement
4 pronouncing a causal link between smoking and certain
5 diseases, or in 1962, with publication of the report
6 of the Royal College of Physicians, or if not then,
7 why not a year ago, with publication of the report of
8 the Surgeon General's advisory committee.

9 "Instituting a biological program today will be
10 argued to be an implied admission that the company
11 believes it has not in the past been doing all it
12 could and should have been doing to find the
13 scientific facts respecting tobacco use and health.
14 We can anticipate, too, that it will be argued to be
15 an implied admission that the company accepts that
16 smoking has been shown to be a cause of pulmonary and
17 other disease. Why, otherwise, would it now
18 institute such a program, reversing its fundamental
19 policy as enunciated in litigation by company
20 officials?" "As enunciated in litigation by company
21 officials."

22 "We cannot say that a jury might not conclude
23 that, if the company is competent to investigate some
24 biological questions today, the company could and
25 should have begun investigating such questions --

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1 some or even many such questions one, two, five, ten,
2 or many years ago." Their words, ladies and
3 gentlemen, not mine.

4 This is precisely the issue in this case. The
5 evidence will show this is a renegade industry which
6 has placed profit above the health and wellbeing of

7 its customers. It did not conduct in-house
8 biological research so that it could, as this
9 document will show you upon a complete reading,
10 continue to criticize and undermine those who were
11 doing scientific research in the field. The concern
12 should not be what a jury might do, but what a
13 company must do in order to protect its company --
14 customers and place a safe product upon the market.
15 This industry, as you will learn from the documents,
16 not only of America, but of each and every one of
17 these defendants, turned its back on its customers in
18 order to preserve its way of doing business. It has
19 sought to hold others -- others accountable for their
20 actions, but it does not want to be held accountable
21 for its own actions.

22 That is what this case is about, ladies and
23 gentlemen, accountability of this industry for its
24 violations of Minnesota law.

25 In 1964, right around the same time as this
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1 document I just showed you, The Tobacco Research
2 Council of the United Kingdom sent representatives to
3 meet with the defendant manufacturers to discuss
4 smoking-and-health research in the United States. At
5 that time British representatives learned that
6 biological research, except possibly for some work
7 being done on a contract basis for Liggett & Myers --
8 in other words, being done outside of the company,
9 they had contracted with somebody -- was short-term
10 and not cancer research. So when they contracted
11 out, they contracted out for short-term studies and
12 not related to cancer. The reason for this, The
13 Tobacco Research Council of the United Kingdom found
14 out, was the personal beliefs of the presidents of
15 the defendants that nothing against smoking had been
16 proved, and the fact the companies did not want to do
17 research which could be used against them in
18 litigation. Their words, not mine.

19 It was felt that if they did smoking-and-health
20 research and had to admit in lawsuits that their
21 experiments showed that cancer could be caused in
22 animals, that this would constitute an admission that
23 cancer could also be caused in human beings. As a
24 result, they chose to do nothing about their own
25 companies but to finance limited research by third

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1 parties. As I said, it left them free to criticize
2 that research and to say that it had no relevance or
3 meaning in a human context.

4 The British also learned during that period of
5 time the manufacturers were doing chemical research
6 on the properties of smoke so that they would be able
7 to alter the constituents quickly if the law should
8 so require. In other words, the defendants would do
9 nothing to change their products unless and until
10 they were required to do so by government or as a
11 result of being held accountable in litigation. The

12 extreme measures that these defendants took in order
13 to perpetuate and fortify their strategy of deceit is
14 evidenced by the fact that they entered into, as Dr.
15 Wakeham testified under oath, a gentlemen's agreement
16 whereby they agreed among themselves -- of course not
17 in writing -- that biological research would not be
18 done. Indeed, when Philip Morris learned in 1970
19 that RJR was doing inhalation studies in rats,
20 causing emphysema, they were doing the
21 smoking-and-health research -- that's one type of
22 biological research -- the president, president of
23 Philip Morris called the RJR president to demand why
24 the gentlemen's agreement was not being adhered to.
25 The RJR president said, "I don't know anything about

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1 this biological research," but he investigated and he
2 found out that in fact it was taking place.
3 Immediately upon his discovery, the biological
4 research which was being conducted at RJR in a
5 laboratory facility called the Mouse House was shut
6 down and many of the scientists working in that
7 facility were terminated on the spot.

8 Another example of the lengths that these
9 defendants will go to keep their dark secrets locked
10 within the bowel of the industry is represented by
11 the following memo, a Philip Morris document which
12 again was hidden in the company's files until we
13 found it in this lawsuit. At the top you'll see it
14 says, "Ship all documents to Cologne. Keep in
15 Cologne. Okay to phone and telex. These will be
16 destroyed." Next in number six it says, "If
17 important letters and documents have to be sent
18 please send to home -- I will act on them and
19 destroy." This is by a Mr. Osdene, who is the
20 director of research at Philip Morris.

21 And what was going on is that Philip Morris was
22 conducting some research in a facility over in
23 Cologne, Germany, but of course they didn't want any
24 of this information in their files here, it might be
25 subject to discovery in a lawsuit and then people

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1 would find out what the companies knew, when they
2 knew it, and what they were doing about it.

3 So what did Mr. Osdene say? Destroy. Send to
4 Cologne. Let's set up some elaborate labyrinth of
5 deceit and deception so it can't be found out in
6 discovery.

7 B.A.T did the same thing. They had a procedure
8 for handling B.A.T scientific documents. B.A.T had a
9 cost-sharing agreement with Brown & Williamson
10 whereby B.A.T would get money from Brown &
11 Williamson, they'd do research over in England, but
12 they didn't want these documents to get into the
13 files of Brown & Williamson because they may be
14 susceptible to discovery in a lawsuit, and if they
15 got discovered in a lawsuit, then again people would
16 know what B&W and B.A.T knew, when they knew it and

17 what they were doing with that information. So they
18 set up an elaborate schematic. And when you read
19 this document, you'll see that they did. They set it
20 up for the purposes of litigation.

21 What they wanted to do is they had this
22 scientific information. They would send it up to a
23 strawman who basically said that it was being
24 prepared for litigation; therefore, it's protected
25 under discovery rules and you can't get at it. They

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1 hide it in attorneys' files. That's what this
2 document is about. When you read it in its entirety,
3 you'll see that's what this is about. That's B.A.T.

4 CTR, 1978, a letter from the member of the
5 Scientific Advisory Board to the scientific director
6 for The Council for Tobacco Research. Now TIRC has
7 been renamed by this point in time. Here's a letter
8 that says, "I think CTR should be named Counsel for
9 Legally Permitted Tobacco Research, CLIFT for short."
10 Talking about what type of research should or would
11 be allowed in this scientific -- independent
12 scientific organization that was set up to protect
13 the public health, that paramount responsibility
14 which they testified to. And what did the chief
15 executive officer of Lorillard think about this CTR?
16 Here's another one. This is in April of 1978, seven
17 months before that one I just showed you. This is
18 written by Curtis Judge, who was the CEO or president
19 of Lorillard, and it came out of a Dr. Spears' file
20 who was the present president of Lorillard. And what
21 does he say, Mr. Judge? "Would he have again
22 abdicated the scientific research directional
23 management of the industry to the 'lawyers' with
24 virtually no involvement on the part of scientific or
25 business management side of the business.

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1 "Lorillard's management is opposed to the total
2 industry future being in the hands of the Committee
3 of Counsel -- it's reminiscent of the late '50s
4 when -- '60s when Ramm's group ran the TI" -- Tobacco
5 Institute -- "CTR and everything else involved with
6 the industry's public posture." Ramm was the lawyer.
7 The Committee of Counsel was a bunch of lawyers who
8 again got together to keep scientific information out
9 of the hands of the public. If they came out in
10 lawsuits, then the public would know, the public
11 health agencies would know, and the industry could no
12 longer maintain its position of undermining public
13 knowledge while at the same time not denying it.
14 You'll see documents to that effect. We'll continue
15 to undermine the public knowledge for those whose
16 support we need, smokers, legislators. Their words,
17 not mine.

18 These documents that you've seen are but
19 examples of the evidence you will see in this case
20 regarding the defendants' conspiracy of concealment
21 and deceit on the life and death hazards of cigarette

22 smoking that were known to them. While the industry
23 continued to suppress information, cast doubt on the
24 validity of the medical statistics, blame lung cancer
25 on everything else but cigarettes, dismiss

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1 independent reports of the health hazards of smoking,
2 and refuse for the most part to conduct biological
3 research, it did recognize that the drug effect of
4 its true product -- its true product,
5 nicotine -- must not be compromised. Nicotine is a
6 poison which is also used as an insecticide. It's
7 the chief active component or compound of tobacco.
8 For decades the company -- the industry has hid the
9 extent of their knowledge concerning the addictive
10 nature of nicotine, and it was only after the 1994
11 congressional hearings that knowledge regarding the
12 industry's manipulation of nicotine in cigarettes
13 began to seep out.

14 At this point we're going to take a short break
15 so that you can get up and stretch a bit.

16 THE CLERK: Court stands in recess.

17 (Recess taken.)

18 THE CLERK: All rise. Court is again in
19 session.

20 (Jury enters the courtroom.)

21 THE CLERK: Please be seated.

22 MR. CIRESI: The nicotine issue is one
23 which is central to this case, and the defendants'
24 own documents speak in striking clarity and through
25 vivid terms the role that nicotine plays in smoking

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1 and health. Were it not for nicotine, we would not
2 be here today since the cigarette industry as we know
3 it would not exist. These again are not my words,
4 but the words of the defendants themselves.

5 Let us look together at two documents from 1972,
6 written by employees of the two largest manufacturing
7 defendants in this case, Philip Morris and RJR. The
8 Philip Morris document was written by William Dunn,
9 Jr., a scientific researcher at the Philip Morris
10 Research Center in Richmond, Virginia. Mr. Dunn was
11 known at Philip Morris as The Nicotine Kid. The
12 second document was written by Claude Teague, Jr., a
13 research scientist at RJR.

14 First we shall here from Mr. Teague. This is an
15 RJR confidential document produced in this
16 litigation. The title, "RESEARCH PLANNING MEMORANDUM
17 ON THE NATURE OF THE TOBACCO BUSINESS ON THE CRUCIAL
18 ROLE OF NICOTINE THEREIN." Mr. Teague starts his
19 memo as follows: "In a sense, the tobacco industry
20 may be thought of as being a specialized, highly
21 ritualized and stylized segment of the pharmaceutical
22 industry. Tobacco products, uniquely, contain and
23 deliver nicotine, a potent drug with a variety of
24 physiological effects." When the defendants made
25 their Frank Statement to the public in 1954, and

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1 indeed right up to the time of today, you have never
2 seen such a statement publicly from any of the
3 defendants, save Liggett, who said that cigarettes
4 are addictive.

5 As we move down that paragraph we find the
6 following words, and again I quote: "His," referring
7 to the smoker, "choice of product and pattern of
8 usage are primarily determined by his individual
9 nicotine dosage requirements and secondarily by a
10 variety of other considerations including flavor and
11 irritancy of the product, social patterns and needs,
12 physical and manipulative gratifications, convenience,
13 cost, health considerations and the like. Thus a
14 tobacco product is, in essence, a vehicle for
15 delivery of nicotine, designed to deliver the
16 nicotine in a generally acceptable and attractive
17 form. Our industry is then based upon design,
18 manufacture and sale of attractive dosage forms of
19 nicotine, and our company's position in our industry
20 is determined by our ability to produce dosage forms
21 of nicotine which have more overall value, tangible
22 or intangible, to the consumer than those of our
23 competitors."

24 The next page, Mr. Teague goes on at the bottom,
25 "If nicotine is the sine qua non" -- meaning the

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1 essential ingredient -- "of tobacco products and
2 tobacco products are recognized as being attractive
3 dosage forms of nicotine, then it is logical to
4 design our products -- and where possible, our
5 advertising -- around nicotine delivery rather than
6 the 'tar' delivery or flavor. To do this we need to
7 develop new data on such things as the physiological
8 effects of nicotine, the rate of absorption and the
9 elimination of nicotine delivered in different doses
10 at different frequencies and by different routes, and
11 ways of enhancing or diminishing nicotine effects and
12 'satisfactions'." And one of the ways they do that
13 is they test it on the marketplace, and that's what
14 he's saying as he moves on. "In the absence of such
15 data, we may survey the market, i.e., the smokers,
16 and conclude that current cigarette products,
17 delivering about 1.3 milligrams of nicotine, appear
18 to, quote, satisfy, end of quote, the typical
19 smoker."

20 Then as he goes down in that paragraph he says,
21 "However, if we knew more about nicotine
22 absorption" -- what he's talking about there is how
23 it's absorbed into the bloodstream, how it gets to
24 the brain quickly and in what form it gets to the
25 brain quickly, because when it gets to the brain it

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1 has its pharmacological drug effects on the human
2 being, and you will hear evidence of that in this

3 case, and that's what he's talking about -- "However,
4 if we knew more about that absorption, action,
5 elimination, enhancement and the like, it should in
6 theory be possible to more precisely specify and
7 deliver the optimum amounts of nicotine activity in
8 sophisticated products which would be more satisfying
9 and desirable to the user. This area merits
10 consideration."

11 And then, ladies and gentlemen, in the next
12 paragraph, he talks about the difference between
13 people who are already smoking and non-smokers,
14 people who haven't started to smoke yet, and you'll
15 find as we read through this and as we go through
16 further documents here that the non-smokers they're
17 talking about are the youth of America. This will
18 come forward not in my words, their words, and their
19 documents will show that.

20 What does Mr. Teague say? "Before proceeding
21 too far in the direction of design of dosage forms
22 for nicotine it may well be -- it may be well to
23 consider another aspect of our business; that is, the
24 factors which induce a pre-smoker or non-smoker to
25 become a habituated smoker. Paradoxically, the

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1 things which keep a confirmed smoker habituated and
2 'satisfied,' i.e., nicotine and secondary physical
3 and manipulative gratifications, are unknown and/or
4 largely unexplained to the non-smoker. He does not
5 start smoking to obtain undefined physiological
6 gratifications or relief, and certainly he does not
7 start to smoke to satisfy a non-existent craving for
8 nicotine. Rather, he" -- as I read through this,
9 think of youth -- "Rather, he appears to start to
10 smoke for purely psychological reasons -- to emulate a
11 valued image, to conform, to experiment, to defy, to
12 be daring, to have something to do with his hands,
13 and the like. Only after experiencing smoking for
14 some period of time do the physiological, i.e.,
15 nicotine, 'satisfactions' and habituation become
16 apparent and needed."

17 Over onto the next page Teague goes on, in the
18 first full paragraph, "What we should really make and
19 sell would be the proper dosage form of nicotine with
20 as many other built-in attractions and gratifications
21 as possible -- that is, an efficient
22 nicotine-delivery system with satisfactory flavor,
23 mildness, convenience, cost, et cetera. On the other
24 hand, if we are to attract the non-smoker or
25 pre-smoker, there is nothing in this type of product

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1 that he would currently understand or desire. We
2 have deliberately played down the role of nicotine,
3 hence the non-smoker has little or no knowledge of
4 what satisfactions it may offer him, and no desire to
5 try it. Instead, we must convince him with wholly
6 irrational reasons that he should try smoking, in the
7 hope that he will himself then discover the real

8 satisfaction obtained, and of course in the present
9 advertising climate, our opportunities to talk to the
10 pre-smoker are increasingly limited and therefore
11 increasingly ineffective. Would it not be better in
12 the long run to identify in our own minds and in the
13 minds of our customers what we are really selling,
14 i.e., nicotine satisfaction? This would enable us to
15 speak directly of the virtues of our product" -- the
16 virtues of our product -- "to the confirmed smoker
17 and would educate the pre-smoker, perhaps indirectly
18 but effectively, in what we have to offer and what it
19 would be expected to do for him."

20 Over on to the next page. "If, as proposed
21 above, nicotine is the sine qua non of smoking, and
22 if we meekly accept the allegations of our critics
23 and move toward reduction or elimination from our
24 products, then we shall eventually liquidate our
25 business. If we intend to remain in business, and

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1 our business is the manufacture and sale of dosage
2 forms of nicotine, then at some point we must make a
3 stand. We should know more, rather than less, than
4 our critics about the physiological effects of
5 nicotine, and we should in all ways scientifically
6 validate and speak to the beneficial effects and
7 satisfactions derived from the use of nicotine."

8 And then Mr. Teague, at the conclusion of this
9 document, goes on and proposes certain indicated
10 research that RJR should undertake, and you'll have
11 an opportunity to read this entire document, and RJR
12 does undertake that type of research into nicotine.
13 RJR, in fact, and the entire industry did precisely
14 what was recommended by Mr. Teague. They researched
15 and manipulated nicotine so that the ability of
16 smokers, those confirmed smokers they referenced, to
17 exercise their choice and decision to quit was
18 compromised. The industry recognized that some
19 people could put -- some can quit cold turkey but the
20 majority could not, and that the addictiveness of
21 nicotine would keep people smoking. It is this
22 intentionally controlled addictive nature of nicotine
23 which keeps people smoking long enough and heavily
24 enough to cause serious illness and death.

25 Mr. Teague, in his cold and detached language,

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1 graphically points out how the industry strategy of
2 deceit is implemented. First, the defendants attract
3 pre-smokers -- that's a code word for youth -- who he
4 admits do not know about nicotine, and then entraps
5 them through their need for nicotine.

6 Mr. Dunn, The Nicotine Kid from Philip Morris,
7 described this deceit and exploitation in more
8 prosaic language. Mr. Dunn attended a conference on
9 what he called a lovely little island lying about 150
10 miles east of the Virgin Islands at the northern end
11 of the Antilles in 1972. This was called -- this
12 conference was called by the CTR, and there were 25

13 or 29 invited scientists who they brought in because
14 they wanted to have a conference on nicotine, and Mr.
15 Dunn on the island of St. Martin attended this
16 conference, listened to all the scientists and
17 drafted this research memo for Philip Morris entitled
18 "MOTIVES AND INCENTIVES IN CIGARETTE SMOKING." Page
19 three he says -- and ladies and gentlemen, these are
20 his words, not mine -- "It would be difficult for any
21 of us to imagine the fate of eating were there not
22 ever any nutritive gain involved. It would be even
23 more provocative to speculate about the fate of sex
24 without orgasm. I'd rather not think about it. As
25 with eating and copulating, so it is with smoking,

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1 the physiological effects serve as the primary
2 incentive. All other incentives are secondary.
3 "The majority of conferees would go even further
4 and accept the proposition that nicotine is the
5 active constituent of cigarette smoke. Without
6 nicotine, the argument goes, there would be no
7 smoking." Some strong evidence can be marshalled to
8 support this argument. "One. No one has ever become
9 a cigarette smoker by smoking cigarettes without
10 nicotine.

11 "Two. Most of the physiological responses to
12 inhaled smoke have been shown to be nicotine-related.

13 "Three. Despite many low nicotine brand entries
14 into the marketplace, none of them have captured a
15 substantial segment of the market." A very, very
16 small segment? Yes. But without nicotine, we would
17 not be here today. Their business would be
18 liquidated.

19 Onto the next page. The Nicotine Kid, in his
20 language, "Why then is there not a market for
21 nicotine per se, to be eaten, sucked, drunk,
22 injected, inserted or inhaled as a pure aerosol? The
23 answer, and I feel quite strongly about this, is that
24 the cigarette is in fact among the most awe-inspiring
25 examples of the ingenuity of man. Let me explain my

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1 conviction." And he goes on to talk about "The
2 cigarette should be conceived not as a product but a
3 package. The product is nicotine. The cigarette is
4 but one -- but one of many package layers." You got
5 to peel the package open to get at the product.
6 "There is the carton, which contains the pack, which
7 contains the cigarette, which contains the smoke.
8 The smoke is the final package. The smoker must
9 strip off all these package layers to get to that
10 which he seeks. Think of the cigarette pack as a
11 storage container for a day's supply of nicotine.
12 Think of the cigarette as a dose -- as a dispenser
13 for a dose unit of nicotine."

14 On to the next page. "Think of a puff of smoke
15 as the vehicle of nicotine." And then finally he
16 says, "Smoke is beyond question the most optimized
17 vehicle of nicotine and the cigarette the most

18 optimized dispenser of smoke." And you will hear
19 from Mr. Richard Hurt from the Mayo Clinic why that
20 is so.

21 But Philip Morris and RJR were not alone. All
22 of the defendants knew the role of nicotine, and you
23 will see from all of their documents how they knew
24 it, researched it, but never disclosed it. As the
25 '60s rolled into the '70s and the '70s into the '80s,

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1 you will see documents from these defendants' files
2 which showed that they intentionally cheated
3 smokers -- their words, not mine -- by lowering tar
4 and nicotine in cigarettes and implying -- not
5 claiming, but implying -- that those cigarettes were
6 safer. The fact is these companies knew that smokers
7 who were moving in droves to lower tar and nicotine
8 cigarettes, thinking they were safer, were obtaining
9 the same tar and subject to virtually the same risks
10 as the higher tar cigarettes.

11 One of the reasons for this is a concept known
12 to the defendants called compensation, which means
13 that a smoker, driven by a need for the physiological
14 effect of nicotine, takes a heavier and deeper draw
15 on lower tar cigarettes, resulting in virtually the
16 same serious health effects as a high tar cigarette.
17 There were other design changes which also enhanced
18 that delivery of nicotine.

19 Indeed, in 1987 B.A.T conducted a study of the
20 biological activity of smoke condensate from the
21 cigarette made in 1959, they kept it refrigerated,
22 and then they compared it to the top five brands on
23 the market in 1987, comparing a '59 cigarette to an
24 '87. '87 has lower tar and nicotine. Think, well,
25 it must be safer. It found that the biological

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1 activity of the earlier cigarette was less than the
2 more modern cigarettes. Lower tar but not lower
3 harm.

4 In the '70s and '80s the industry's campaign of
5 deceit became more sophisticated and complex as the
6 defendants became more focused on the increased
7 engineering of the cigarette as a nicotine-delivery
8 system. The defendants were faced with a problem:
9 How to reduce tar and nicotine but still maintain a
10 sufficient level of nicotine so that it could have
11 its intended physiological effect.

12 In 1953, Mr. Teague, who we've already heard
13 from, authored another report which looked at the
14 sales growth of Marlboro and Kool, which were the
15 competitors to the Winston and Salem brands of RJR.
16 Remember, Mr. Teague was at RJR, so they're doing
17 some competitive intelligence. They are looking at
18 Philip Morris, which manufactures Marlboro, and
19 they're looking at B&W, who manufactures Kool, and
20 saying what is going on in the marketplace.

21 Reynolds had been concerned that Kool had
22 surpassed Salem and Marlboro was close to overtaking

23 Winston, which at that point had been the
24 best-selling cigarette in America. During this same
25 period of time the cigarette industry was continuing
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1 to reduce tar and nicotine in their cigarettes as
2 part of their strategy to create a sanctuary or
3 illusion that cigarettes were being made safer to
4 smokers. Teague's report was a result of research
5 conducted at RJR looking at the chemical and physical
6 properties of the competing brands and comparing
7 those to the RJR brands.

8 You will learn in this case, ladies and
9 gentlemen, that the cigarette is not a simple
10 agricultural product where we take the tobacco leaves
11 and roll it up and make cigarettes, but it's a
12 complex and highly engineered product containing
13 hundreds of chemicals and carcinogens. For example,
14 just a partial list of additives, about 599 chemical
15 additives right on this list right here, and that's
16 not all of them that's engineered into these
17 cigarettes. There had been identified as of 1995 by
18 some medical researchers 71 known carcinogens in
19 tobacco smoke.

20 Mr. Teague, in his research in 1973, discovered
21 that the most significant difference between the
22 Reynolds brand and the Philip Morris brands and Brown
23 & Williamson was in the area of what's called pH.
24 Smoke pH is a means of expressing on a zero to 14
25 scale -- it's a logarithmic scale -- the degree of

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1 acidity or alkalinity of a substance, in this case
2 cigarette smoke. The lower it is, the more acid, so
3 zero up to seven is acidic, seven is neutral -- water
4 would have a pH of seven -- and above that it becomes
5 alkaline. Now as the smoke pH increases -- and you
6 just have to move it a little bit, not a lot -- it
7 becomes more alkaline, and as smoke pH decreases it
8 becomes acidic.

9 The research department at Reynolds discovered
10 that although Marlboro and Kool delivered about the
11 same amounts of total smoke nicotine -- and they call
12 that delivery and it's done by a test by the FTC, so
13 they deliver about the same amount, those two brands,
14 Marlboro and Kool, as Winston and Salem -- they had a
15 higher smoke pH, which meant that Marlboro and Kool
16 contained more free nicotine than the Reynolds
17 brands. This means that the nicotine was in free or
18 free base form. And you've all heard of crack
19 cocaine when they smoke it, free basing it, gets into
20 your system faster, has its drug effect faster. And
21 that's what Reynolds found out about Marlboro and
22 Kool. It was more volatile and more rapidly absorbed
23 through the lung into the blood of the smoker.

24 It was further discovered that as a result of
25 its higher smoke pH, Marlboro, despite a two-thirds

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1 reduction in tar and nicotine over the years, had
2 maintained essentially the same amount of free
3 nicotine in its smoke as the Winston cigarette had
4 had many years earlier when it had higher tar and
5 nicotine. On the other hand, Winston, which had been
6 reducing tar and nicotine, had experienced a
7 two-thirds reduction in free nicotine, and this is
8 free nicotine again that maximizes the potential for
9 the nicotine to get to the brain quicker. So
10 Marlboro had almost three times the amount of free
11 nicotine as Winston in 1973. The significance of this
12 was that the 1973 Marlboro had the same addictive
13 effect on people as the earlier Winston even though
14 the total nicotine had been reduced.

15 During the same period of time, not
16 surprisingly, Marlboro was dramatically increasing
17 its market share, and you will see that that was
18 primarily among our youth. Reynolds concluded -- and
19 this -- these are their words, again, not
20 mine -- that Philip Morris's manipulation of nicotine
21 was deliberate in order to give it a greater nicotine
22 kick, and one way this was achieved was by adding
23 ammonia to Marlboro.

24 Philip Morris had started its ammoniation
25 process on Marlboro in 1964, and as a result of

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1 Reynolds' competitive research, Reynolds ammoniated a
2 Camel in 1974 and many others of its brands in the
3 1979 to 1980 time period. Indeed, all of the
4 defendant manufacturers in this case, with the
5 exception again of Liggett, ammoniate some of their
6 brands of cigarettes which results in increased pH
7 nicotine that enhances nicotine's ability to get into
8 the smoker's system more rapidly. Defendants have
9 also implemented other design changes that you will
10 learn as the evidence unfolds in their cigarettes to
11 increase the cigarette's effectiveness as a
12 drug-delivery device.

13 Never have any of these defendants or their
14 public relation fronts, the CTR and TI, discharged
15 their legal responsibility by disclosing to the
16 public their sophisticated, scientifically based
17 manipulation of nicotine. The reason for this is
18 simple: If they honestly and completely disclose
19 this information, they could no longer argue to the
20 public that smoking was a free choice. And you all
21 heard about that in voir dire. The industry's fear
22 of a disclosure of their own internal knowledge about
23 the addictive nature of nicotine is expressed in a
24 secret Tobacco Institute document dated September
25 9th, 1980, written to a senior vice-president of The

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1 Tobacco Institute, a document that we obtained in
2 this litigation, and you'll see it says
3 "CONFIDENTIAL: MINNESOTA TOBACCO LITIGATION." And

4 the author of this document, talking about -- let me
5 put it in context for you. At this point in time the
6 National Institute of Drug Abuse wanted to put
7 "addictive" on the cigarette warning label. None of
8 these defendants, with the exception of Liggett, have
9 such a warning label on and Liggett's only came on
10 within the last year. But this was back in 1980.
11 And of course the industry was going to fight that
12 with all of their might and all of their power, and
13 I'll tell you why right here. This issue of choice
14 they all like to talk about, they ask questions about
15 to prospective jurors? Here's what they said. "I
16 feel badly about my own lack of intelligence
17 gathering in this situation" -- this is the author.
18 He didn't know that the National Drug Institute was
19 going to come out with this proposal -- "but I don't
20 think the questions I now raise are academic. Shook,
21 Hardy," that's another one of the defendants' law
22 firms, "Shook, Hardy reminds us, I'm told, that the
23 entire matter of addiction is the most potent weapon
24 a prosecuting attorney can have in a lung
25 cancer/cigarette case. We can't defend smoking as

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1 'free choice' if the person was 'addicted'." Their
2 words, not mine.

3 The industry's calculated determination to not
4 disclose its knowledge concerning nicotine addiction
5 and manipulation was not only based on their
6 realization that juries, when faced with the hidden
7 knowledge, would reject the industry's bogus claim of
8 free choice, but also that if such knowledge reached
9 governmental authorities, the industry would be
10 forced to substantially reduce or eliminate nicotine
11 from tobacco. Although all of the manufacturing
12 defendants can essentially eliminate nicotine from
13 cigarettes, they have chosen not to do so. And you
14 saw why: They'd have to liquidate their business.

15 And their fear of this regulation is expressed
16 in a meeting of tobacco company research directors
17 which took place on February 16th, 1983. In
18 attendance at that meeting were representatives from
19 B.A.T, Philip Morris and American. And in that
20 document, which you'll have an opportunity to read
21 during this trial, they show that if any future
22 study -- Should we study this? -- if any future study
23 either was or not associated with perpetuating the
24 smoking habit in regard to nicotine, the industry
25 will be called upon to eliminate nicotine from the

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1 product. A heads we lose, tails we cannot win
2 situation."

3 As Mr. Teague stated in 1973, the physiological
4 effects of nicotine are unknown or largely
5 unexplained to the beginning smoker. A person begins
6 to smoke for other reasons, such as emulating a
7 valued image, conforming to experiment, to defy, or
8 to be daring. It is only after experiencing smoking

9 for a period of time that the physiological
10 satisfactions become needed. These defendants have
11 long studied the smoking patterns of our youth and
12 the reasons why youth began to smoke. Their
13 documents reflect that the overwhelming majority of
14 smokers begin by the age of 18. These defendants
15 have long known that it is essential that they
16 recruit teenagers and adolescents if they are to
17 remain profitable, yet you will hear in this
18 courtroom the defendants' argument that the reason
19 they spend billions of dollars per year in promotion
20 and advertising is only to get adults to switch
21 brands even though you will hear the evidence from
22 their own files that the amount of adults who switch
23 is so miniscule that no one, no one would spend that
24 kind of money to attempt to get switchers. It's
25 directed to people who have not yet started smoking,

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1 and the overwhelming majority of those people are our
2 youth.

3 Once again, the defendants' own previously
4 secret documents will prove their statements to be
5 false. Company after company and document after
6 document, in clear and unequivocal language, point
7 out that in order to sustain their market, they must
8 attract youth to their cigarette brands. It is no
9 coincidence, ladies and gentlemen, that Philip Morris
10 is the largest tobacco company in the United States
11 and that Marlboro is the number one selling cigarette
12 brand in the United States. Marlboro has risen to
13 its number one position on the backs of the youth of
14 this country. For decades Philip Morris has been
15 studying the youth market, teenagers.

16 In 1969, Dr. Wakeham again, November 26, 1969 --
17 I know it's hard read, that's the date, you'll have
18 this document yourself -- presented to the Philip
19 Morris board of directors by Dr. Wakeham, he's
20 talking here about smoker psychology research, why
21 people start smoking, and one of his slides, in
22 addition to other ones, was slide 13, and he breaks
23 down the question. "First, we have to break the
24 question into its two parts: Why does one begin to
25 smoke? Why does one continue to smoke?" He says,

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1 "There's general agreement on the answer to the first
2 part. The 16- to 20-year-old" -- here they're going
3 after 16 -- 17-year-olds, teenagers, they have never
4 ever publicly said they go after teenagers, here
5 they're reporting to the board of directors of Philip
6 Morris in 1969, that's the highest authority in the
7 corporation, that "The act of smoking is symbolic.
8 It signifies adulthood. He smokes to enhance his
9 image in the eyes of his peers." Who does that but
10 youth? Philip Morris, their own document.

11 In 1974 Philip Morris hired the Roper
12 Organization to conduct a study of smoking habits
13 among young smokers titled "A Study of Smoking Habits

14 Among Young Smokers Prepared for Philip Morris
15 Incorporated July 1974." "Interviewers were
16 instructed to go to locations where young people, as
17 described in their quota assignments, were likely to
18 be found, near high schools and colleges, around
19 young people's hangouts such as soda fountains,
20 recreation areas, parks, bowling alleys, beaches,
21 lakes, et cetera."

22 Talking about where the market was going in this
23 report: "What can Philip Morris do about the
24 situation? We are not sure that anything can be done
25 to halt a major exodus if one gets going among the

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1 young. This group follows the crowd, and we don't
2 pretend to know what gets them going for one thing or
3 another. Certainly Philip Morris should continue
4 efforts for Marlboro in the youth market, but perhaps
5 as strongly as possible aimed at the white market
6 rather than attempting to encompass blacks as well."
7 They were so sophisticated in their research that
8 they segregated, they segregated the market between
9 whites, blacks, Hispanics, between various age
10 groups. That's what these companies did in selling
11 this deadly addictive product.

12 They go on to say in this document, "On other
13 fronts, there appear to be good possibilities for
14 some of the other Philip Morris brands in the young
15 market, and these could be promoted."

16 May 21, 1975, another Philip Morris document.
17 "Marlboro has for many years" -- and I'm just reading
18 from their documents, I'm not making these words
19 up -- "Marlboro has for many years had its highest
20 market penetration among younger smokers. Most of
21 these studies" -- and this is a gentleman who's
22 reporting on this, and you'll see his name a lot,
23 Myron Johnston to a Dr. Seligman -- so he says, "Most
24 of these studies have been restricted to people age
25 18 and over." Those are independent studies that

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1 they get from outside the company. "But my own data,
2 which includes younger teenagers, shows the entire
3 Marlboro market penetration among 15- to
4 17-year-olds. The teenage years are important
5 because those are the years during which most smokers
6 begin to smoke, the years in which initial brand
7 selections are made and the period in the life cycle
8 in which conformity to peer group norms is greatest."
9 And yet they say they don't market to youth.

10 Another exhibit, May 29th, 1979. Philip Morris,
11 on their letterhead again, "Marlboro represents 60
12 percent of Philip Morris U.S.A. sales." Sixty
13 percent, one brand. "Marlboro dominates in the 17
14 and younger age category, capturing over 50 percent
15 of this market."

16 Another Philip Morris document, March 31, 1981,
17 Philip Morris Research Center, Myron Johnston's name
18 is on there again, report titled "YOUNG SMOKERS --

19 PREVALENCE, TRENDS, IMPLICATIONS AND RELATED
20 DEMOGRAPHIC TRENDS." This again is directed to Dr.
21 Seligman. "For over fifteen years certain
22 demographic and social trends have been moving in
23 directions favorable to industry growth. Now, one by
24 one, these powerful social and demographic factors
25 are turning against us, and by 1984 -- 5 all will be

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1 operating against us.

2 "The trends are" -- let's just take a look at
3 the first two -- "After increasing for over a decade,
4 the prevalence of teenage smoking is now declining
5 sharply." This was back in 1985. You'll find that's
6 no longer the case today.

7 "Two. After increasing for over a decade, the
8 average daily consumption of teenage smokers is
9 declining." Over on to the next page. "This report
10 deals with only one of these trends -- teenage
11 smoking and attitudes towards smoking, together with
12 related demographics. Subsequent reports will cover
13 the social, economic and psychographic
14 characteristics of teenage smokers and the
15 demographics of other significant age groups.

16 "Because the major data sources have just become
17 available and because of the importance of these data
18 to the company, I have elected to report the data in
19 a series of memoranda rather than wait and issue all
20 of the material at once."

21 Over to his summary. "It is important to know
22 as much as possible about teenage smoking patterns
23 and attitudes. Today's teenager is tomorrow's
24 potential regular customer, and the overwhelming
25 majority of smokers first begin to smoke while still

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1 in their teens. In addition, the ten years following
2 the teenage years is the period during which average
3 daily consumption per smoker increases to the average
4 adult level."

5 Down to the next paragraph. "Furthermore, it is
6 during these teenage years that the initial brand
7 choice is made." And you're going to see a lot of
8 documents about this, first regular brand, young
9 adult smokers, that's another one, code word, young
10 adult smokers, RJR's code word for teenagers and
11 youth. "At least a part of the success of Marlboro
12 Red during its most rapid growth period was because
13 it became the brand of choice among teenagers who
14 then stuck with it as they grew older -- this
15 combined with the rapid growth in the absolute number
16 of teenagers. Between 1967 and 1976 the number of
17 15- to 19-year-olds in the U.S. increased 18 percent,
18 and there was also an increase during at least part
19 of that period in the percent of teenagers who smoked
20 cigarettes."

21 It is so important that they grip them early
22 where they don't know about nicotine, as they
23 themselves say, and then they get them hooked on the

24 nicotine because they stay with the brand, there is
25 brand loyalty. Exceedingly important as you go
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1 through and you watch the demographics of these
2 groups and the amount of revenues they drive to the
3 company.
4 Another Philip Morris document, "Product Testing
5 Short Course," January 23rd and 24th, 1984, Richmond,
6 Virginia. This is a great big thick document. I've
7 just taken out part of it. You'll have the
8 opportunity to read all of it so that you can
9 understand the entirety of what's going on and be
10 sure and assured that nothing's being taken out of
11 context. You can look at all of the information.
12 We'll put it all in. "Marlboro floundered for eight
13 years and then hit a responsive chord among post-war
14 baby-boom teenagers with a theme from the Magnificent
15 Seven and an image uncalculatedly right for the wave
16 of teenagers coming of smoking age."
17 Down in the next paragraph. "While it is
18 difficult to see anything in the Kool image that
19 young people could associate, Kool is apparently the
20 in menthol plan corresponding to Marlboro, especially
21 among blacks. I interpret Newport's success as a
22 continuation of Kool's success. Kool appears to have
23 lost favor among the young black smokers." Again
24 stratifying and segmentizing the population. That's
25 how sophisticated they got with regard to their

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1 marketing to youth.
2 Philip Morris isn't alone. RJR is the number
3 two company. For years RJR, through competitor
4 intelligence, as I told you, had been analyzing
5 Philip Morris's success in selling to youth and
6 trying hard to catch up to Philip Morris in sales to
7 youth. In 1972, in a memo that was sent straight to
8 the president of the company, the marketing
9 department reported that Philip Morris, the fastest
10 growing company, had a substantially higher share
11 among smokers age 14 to 17. The president of RJR was
12 also told, quote, "Marlboro is the primary reason
13 that Philip Morris does so well among young adults,"
14 their code word for our youth.
15 January 1973, another RJR document, and this is
16 the one I was telling you about with regard to Mr.
17 Teague. A secret document. This is the one where he
18 looked at the nicotine and nicotine kick. Here's
19 what he said in it. "Marlboro was continuing to grow
20 in sales." And he said, "Winston had a severe
21 problem." And Marlboro at this time in '73 was
22 continuing to grow and the document reported that the
23 most profound differences in sales between Winston
24 and Marlboro were in attracting ages 14 to 17.
25 Winston had a 13 percent share of the market among

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1 youth ages 14 to 17, Marlboro had a 40 percent share
2 among youths 14 to 17.

3 Over on page eight. "In order to actively
4 compete with Marlboro, we feel that Winston's media
5 planning must reflect a more single-minded
6 orientation toward spending against young adult urban
7 males."

8 At the same time RJR's scientists were also
9 looking for ways, in addition to marketing, to
10 capture the youth market. You'll remember that
11 Philip Morris, with Marlboro, was the first company
12 to use ammonia, and this resulted in a higher pH and
13 nicotine free base. In addition, adding ammonia also
14 made the cigarettes less harsh.

15 Teague, who I also referenced to you earlier, in
16 this secret '73 memo, recognized that Marlboro
17 represented a new type of cigarette which was mild
18 but had a high nicotine kick. They found this --

19 They did research on this at RJR, and he issued
20 this report called "IMPLICATIONS AND ACTIVITIES
21 ARISING FROM CORRELATION OF SMOKE PH WITH NICOTINE
22 IMPACT, OTHER SMOKE QUALITIES, AND CIGARETTE SALES."
23 And the chart -- one of the charts -- before I get to
24 the chart, let -- let me just read to you what --
25 what Mr. Teague said. And he reports this to

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1 management. "If our data, correlations and
2 conclusions are valid, then what has emerged is a
3 rather new type of cigarette, represented by Marlboro
4 and Kool, with high nicotine kick, burley flavor,"
5 which is a type of tobacco, "mildness to the mouth,
6 and increased sensation to the throat, all largely
7 the result of higher smoke pH. There is evidence
8 that other brands which are selling well also have
9 some of these attributes, particularly increased free
10 nicotine impact. Because brands of this type
11 continue to show vigorous growth in sales because a
12 high proportion of beginning smokers are learning to
13 like Marlboro," that's a euphemism for youth,
14 beginning smokers, the leading brand of the new type,
15 "and because we have no current brand in this newly
16 identified major segment of the market, it has become
17 appropriate for us to consider moving our present
18 brands in the direction of the new type of cigarette
19 and/or creating new products to compete directly in
20 that area of the market." And that's what they did,
21 ladies and gentlemen, they ammoniated their
22 cigarettes and they competed.

23 And you can see the concern they had by this
24 graph which is up on the board right now. The first
25 graph is the annual sales in billions, and the solid

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1 line at the top is Winston. It was the leading
2 seller at that time. And then you see Marlboro, the
3 broken line, coming up. Now the next graph down on
4 the right shows the pH. The broken line, you'll see

5 what the pH of the Marlboro cigarette is, and below
6 that you see the pH of the Winston. Marlboro was
7 increasing its pH. And finally you see the free
8 nicotine in smoke in the cigarette. Remember, I was
9 talking about back in the '50s and '60s where they
10 started lowering tar and nicotine and the pH was at a
11 certain level. You can -- you can watch this. The
12 free nicotine, free nicotine creates more -- it is a
13 result of higher pH, so as they came down, they were
14 losing nicotine. And look what happens to Marlboro,
15 that broken line. As they started going into the
16 ammoniation, and look what Winston is, and that's
17 what I was telling you about the difference between
18 the pH and the free nicotine, Winston versus
19 Marlboro, the ability to get to the brain quicker.

20 Another RJR scientist, Frank Colby, wrote a memo
21 entitled "Cigarette Concept to Assure RJR a Larger
22 Segment of the Youth Market." This new cigarette
23 would be for the up-and-coming new generation of
24 smokers. Colby's idea for a youth brand cigarette
25 was to get additional nicotine kick, not by adding

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1 more nicotine, but as Dr. Teague said, by increasing
2 the pH. Any additional nicotine kick could be easily
3 obtained through pH regulation. His words, not mine.
4 And of course we now know from RJR's secret documents
5 that RJR did start using ammonia to increase pH and
6 free base nicotine in its cigarettes beginning in
7 1974.

8 What did RJR really consider the youth market to
9 encompass? At a September 30th, 1974 meeting at
10 Hilton Head Island, a market presentation was made to
11 the board of directors, the very top of the company.
12 This document in unequivocal terms lays out RJR's
13 understanding of the youth market. There you see
14 "1975, MARKETING PLANS PRESENTATION, HILTON HEAD,
15 SEPTEMBER 30, 1974." Objective in 1975. "Our
16 paramount marketing objective in 1975 and ensuing
17 years is to re-establish RJR's share of the market
18 growth in the domestic cigarette industry."

19 Remember what they said their paramount
20 responsibility to the public was back in 1954, the
21 safety and health of the public, paramount to every
22 other consideration in their business? That's what
23 they said externally in 1954. This is what they say
24 internally in 1974.

25 Chart two, "Increase our young adult franchise.

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1 First, let's look at the growing importance of the
2 young adult in the cigarette market." Remember that
3 term, "young adult?" "In 1960 this young adult
4 market" -- look at the ages, 14 to 24 -- "resulted --
5 or represented 21 percent of the population.

6 "As seen by this chart, they will represent 27
7 percent of the population in '75. They represent
8 tomorrow's cigarette business. As this 14-to-24 age
9 group matures, they will account for a key share of

10 the total cigarette volume -- for at least the next
11 25 years." And that would mean today's 39- to
12 45-year-old people. That's what they said back in
13 1974, "Let's go get them."

14 The next page, "The 14-to-24 age category,
15 Philip Morris has a 38 percent share and Brown &
16 Williamson a 21 percent share. Both companies have
17 significantly lower shares in the remaining age
18 categories." Yes, those who are older, those to whom
19 sales of cigarettes are legal. "In sharp contrast,
20 our company line shows a pattern of relatively even
21 strength among all age groups and strength in the 25
22 and older categories, where we exceed both
23 competitors. Winston is at 14 percent in the
24 14-to-24 age group versus Marlboro at 33. Salem is
25 at nine percent versus Kool at 17." There again,

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1 they were lagging behind in the youth market.

2 So what do they say? Strategy: "Direct
3 advertising appeal to the younger smokers while being
4 true to the brand's basic product attributes.
5 Research has shown that among young adults," that's
6 their 14 to 24, "the new Winston ads"-- they were
7 test marketing their ads -- "generate twice as much
8 recall as any previous Winston campaign and are 40
9 percent more persuasive compared to the Marlboro
10 campaign." There they were, their own words
11 targeting youth, putting ads out there, seeing how
12 they reacted in the marketplace, and presenting it to
13 the board of directors of the second largest tobacco
14 company in this country.

15 In January of 1975, talking about Camels, they
16 said, "To ensure increased and long term growth of
17 Camel filters, the brand must increase its share
18 penetration among the 14-to-24 age group which have a
19 new set of more liberal values and which represents
20 tomorrow's cigarette business."

21 In 1980 in July, a memo to the president of RJR.
22 Again RJR recognized Marlboro's strength among the
23 14- to 17-year-old smokers. "Philip Morris has a
24 total share of 59 percent among 14- to 17-year-old
25 smokers, and specifically Marlboro had a 52 percent

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1 share." Again RJR planners planned to take action to
2 capture more teenage smokers. "Hopefully our various
3 planned activities that will be implemented this fall
4 will aid in some way to reducing or correcting these
5 trends." They had the evidence that showed they had
6 to get these kids when they're young because they're
7 the ones who supply you money over the long term and
8 they are brand loyal, and these companies know that.

9 In 1984, an in-depth study of the youth market
10 by RJR demonstrated that youth smokers had been the
11 critical factor in the growth and decline of every
12 major brand for every major tobacco company for 50
13 years. RJR felt that younger adult smoker -- their
14 code word for youth -- would continue to be just as

15 important to tobacco companies in the future. And
16 here's what they say. "Younger adult smokers are the
17 only source of replacement smokers." What's a
18 replacement? They replace those who may be able to
19 overcome the addiction and quit, and there are a lot
20 of those, and they replace those who die, over
21 400,000 every year.

22 "If younger adults turn away from smoking, the
23 industry must decline, just as the population which
24 does not give birth will eventually dwindle. Younger
25 adult smokers are critical to RJR's long-term

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1 performance and profitability. Therefore, RJR should
2 make a substantial long term commitment of manpower
3 and money dedicated to younger adult smoker programs.
4 An unusually strong commitment from executive
5 management will be necessary." And it was given,
6 ladies and gentlemen: We all know about Joe Camel.

7 In 1987 the advertising, talking about Camel,
8 also successfully achieves communication of the
9 desired individualistic Camel user personality whom
10 the target smoker relates to as one of their friends.
11 October of '91. "The non-people character nature of
12 Joe Camel seems key to why consumers willingly admit
13 its relevance and/or their envy of his lifestyle
14 and/or that he represents a role model."

15 Brown & Williamson also focused on youth by
16 regularly studying and targeting teenagers. Philip
17 Morris wasn't alone, RJR wasn't alone. In 1973 their
18 direct target group, Brown & Williamson, 6.3, 16- to
19 25-year-old smokers.

20 In February of 1973, another document, "Kool has
21 shown little or no growth in the share of users in
22 the 26 plus age group. Growth is from 16- to
23 25-year-olds. At the present rate, a smoker in the
24 16- to 23-year-age group will soon be three times as
25 important to Kool as a prospect in any other broad

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1 age category.

2 Page three, "Kool's stake in the 16- to
3 25-year-old population segment is such that the value
4 of this audience should be accurately weighted and
5 reflected in current media programs."

6 September 10th, 1975, "Kool's effort" -- excuse
7 me. They want to target them, they had to target
8 them; now what do they say about it? "Kool's effort
9 in the 16- to 25-age-group continues to be working.
10 Kool's effort is successfully attracting new smokers.
11 Kool's starter level is well above the average among
12 all age groups and both sexes, with particularly
13 strong evidence among female starters."

14 October 9th, 1979. Reference is to 13- to
15 17-year-olds who are now starting to smoke, and they
16 say, "It appears there will be a new battle for the
17 new generation."

18 Lorillard also relied on the youth market. A
19 memo to the president of Lorillard recognized the

20 importance of the high-school student. Their words
21 again, not mine. "The success of Newport has been
22 fantastic during the past few years. The base of our
23 business is the high-school student."

24 The industry through these defendants knew they
25 were dependent on attracting non-smokers if they were

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1 to survive and prosper. The evidence will show their
2 extensive research into the demographics of smokers
3 led to the inescapable conclusions that their
4 recruits must be America's youth. It is and always
5 has been this segment of our population which has the
6 most pronounced need to emulate a role model, to
7 conform, to experiment, to defy and to be daring.
8 All of this was known by these defendants and
9 capitalized on in order to ensure that there would be
10 fresh recruits into the market for this addictive and
11 deadly product.

12 Defendants used what they knew about the
13 psyche and needs of youth to fashion billion-dollar
14 marketing campaigns aimed at subtly and
15 subconsciously enticing youth to start smoking.
16 Defendants knew that most young people would say that
17 it was peer pressure that led them to start smoking.
18 As a result, defendants targeted their marketing to
19 influence the teen peer group in ways that these
20 young people would not even perceive to be working on
21 them. Defendants' internal documents in their own
22 words emphasized the importance in attracting youth
23 due to teens' brand loyalty. The industry knew that
24 their greatest revenues over the long term are from
25 those who begin smoking by age 18. Defendants, faced

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1 with this irrefutable fact disclosed by their own
2 elaborate and extensive marketing research that 90
3 percent of smokers begin by age 18, accordingly they
4 treated America's youth as a commodity who where the
5 source of replacement smokers for those who were able
6 to beat the addiction and quit and for those who died
7 from diseases caused by smoking.

8 In conclusion, ladies and gentlemen, the
9 evidence in this case will come forward from that
10 witness stand and through experts on addiction,
11 internal medicine, epidemiology, biostatistics,
12 chemical engineering, adolescent behavior, antitrust
13 economics, marketing, and through these defendants'
14 own employees. The totality of that evidence will
15 show a deliberate, intentional and sustained course
16 of conduct by these defendants which has caused
17 damages to the state of Minnesota and Blue Cross in
18 the amount of one billion seven hundred seventy
19 million dollars. Those damages will be established
20 through the introduction of a sophisticated and
21 scientifically valid statistical model based upon
22 detailed and extensive health-care cost records of
23 the state and Blue Cross.

24 As I stated earlier, this is a case of deceit

25 and exploitation in which these defendants were
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1 guided not by their duty under the law but by their
2 allegiance to their bottom line. You will hear the
3 defendants' attempt to deflect attention from their
4 own conduct by suggesting the issue should be focused
5 on the decision of adults to exercise their free
6 choice to smoke. You will hear defendants argue that
7 the hazards of smoking were common knowledge and that
8 cigarettes are a legal product. At the same time
9 defendants will deny that smoking causes any
10 diseases, thereby suggesting that everybody else
11 should know what they themselves do not know or will
12 not admit with regard to their own product.

13 Remember the commitments that we have made to
14 youth and those which the defendants will make to you
15 in their opening statements. Keep those in mind as
16 the evidence unfolds in this case and judge us by
17 those commitments at the end of this case. This case
18 is not about free choice, but rather about the
19 illegal conduct of these defendants in selling an
20 addictive product.

21 At the end of the evidence we will ask you to
22 return a verdict based on that evidence and the
23 instructions that Judge Fitzpatrick provides to you.

24 Thank you very much.

25 THE COURT: We'll recess until 2:00
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1 o'clock.
2 (Court recesses.)

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1 AFTERNOON SESSION.

2 THE CLERK: All rise.

3 (Jury enters the courtroom.)

4 THE CLERK: Please be seated.

5 THE COURT: Counsel.

6 MR. BLEAKLEY: This case, this case before
7 you, is about money. The state and Blue Cross,
8 through Mr. Ciresi, have leveled a lot of charges and
9 accusations against the defendants in this case.
10 They're very specific charges and they have made very
11 specific claims for money damages. And what Mr.
12 Ciresi and his clients want you to do at the end of
13 this case is to award money, money for injuries they
14 claim were caused by the defendants' wrongful
15 product -- wrongful conduct.

16 What I'm going to tell you here this afternoon
17 is that the state and Blue Cross are not going to
18 prove that they suffered any of the injury they claim
19 they suffered because of the defendants' wrongful
20 conduct, and let me make very clear right at the
21 beginning what I am talking about. There are three
22 very specific health-care programs involved in this
23 case, and it is under these three very specific
24 health-care programs that the state and Blue Cross
25 seek damages. The first of those is Medicaid, the

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1 second is General Assistance Medical Care, and the
2 third is Blue Cross insurance. And the reason why
3 I'm writing this up here and I'm going to leave it up
4 here is because I want you ladies and gentlemen to
5 remember all the way through my opening statement,
6 through the opening statements of the other
7 defendants in this case, and as you listen to all of
8 the evidence in this trial, that we're not talking
9 about health-care costs in general in this case. The
10 state and Blue Cross are seeking recovery under these
11 three very specific programs, and what I'm telling
12 you is the state and Blue Cross are not going to
13 prove that they have suffered any increased health-
14 care costs in these three programs because of the
15 defendants' conduct.

16 Good afternoon. Let me introduce myself once
17 again. My name is Peter Bleakley and I'm one of the
18 attorneys for Defendant Philip Morris in this case,
19 and as is obvious, I'm going first. Some of my
20 colleagues will follow me and I'll talk about that in
21 just -- just a moment. I want to begin by stating to
22 you, ladies and gentlemen, that the defendants
23 understand that many of you, maybe even most of you,
24 don't like smoking very much, and some of you,
25 hopefully only some of you, don't even like cigarette

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1 companies very much. The defendants understand,
2 believe me, that smoking has become a major issue in
3 this country and that people, and some of you may be
4 among them, have very strongly-held views about
5 smoking across the board, certain aspects of smoking.

6 We understand that this is a subject that is in the
7 newspapers every day, it is a subject about which
8 people and governments and companies and public
9 health authorities have strongly-held views. We
10 know, for example, that some of you may think that
11 cigarette advertising should be banned. There may
12 even be a few among you who think that cigarette
13 sales should be banned. But as Mr. Ciresi said in
14 his opening, that is not a issue in this case.

15 You may conclude -- you may believe
16 already -- you may conclude at the close of the
17 evidence in this case that there are occasions or
18 instances in which the tobacco companies or some of
19 them have behaved foolishly or badly or even wrongly.
20 You may feel -- you may conclude that the cigarette
21 companies should have conceded years ago that smoking
22 causes disease. You may have all of those views.
23 You may come into the courtroom with those views and
24 you may leave with them, or even stronger ones. But
25 the issue that you have to decide in this case is

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1 whether wrongful conduct by the defendants caused the
2 state and Blue Cross to incur increased health-care
3 costs, increased health-care costs in these three
4 specific programs. That's what this case is all
5 about.

6 Now when Mr. Ciresi and I and my colleagues
7 spent all of the time -- and the court -- with you
8 and other potential jurors talking about how you can
9 be fair and impartial in this case, you remember how
10 all of us said -- asked you: Can you put all of that
11 other stuff, all of that furniture that you come in
12 here with out of your mind and try and listen only to
13 the evidence that you see and hear in this case, and
14 to try to be fair and impartial? And that's what I
15 want to start by asking you once again to do. And I
16 want to ask you to do it in the context of what this
17 case is about. So no matter what you may think about
18 smoking or cigarette companies, remember that what
19 you have to do here is decide whether, under the
20 facts that are presented to you in this courtroom and
21 nowhere else, the defendants have acted unlawfully,
22 violated the laws of the state of Minnesota, and
23 whether those wrongful acts caused the specific
24 injury that the plaintiffs claim they caused.

25 Now I want to tell you a little about some of

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1 the evidence that the defendants believe that you're
2 going to see and hear in this case. I want to stop
3 for just a moment. I'm sure that all of you know
4 this, but what Mr. Ciresi was telling you here this
5 morning is what the state believes the evidence is
6 going to show. That wasn't evidence. That wasn't
7 testimony. Those little pieces of documents from
8 which Mr. Ciresi read in his opening statement are
9 just that, little pieces of documents. This trial
10 hasn't really started until the first witness gets up

11 on the witness stand and you start hearing evidence.
12 And the evidence hasn't started yet. So what Mr.
13 Ciresi says isn't evidence but what he believes the
14 evidence is going to show, and what I'm about to tell
15 you and what my colleagues who will follow me are
16 about to tell you is what we believe the evidence
17 will show. But you all are the judges and the only
18 judges of what the evidence in fact shows. You're
19 the ones who, when this is all over and we've made
20 our closing arguments and the judge has given you the
21 legal instructions that are applicable, you're going
22 to go into the courtroom and you're going to decide
23 what the facts are, not us. None of us.

24 So I ask you, and I'll try not to ask it again:
25 Please keep an open mind and remember what this case

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1 is about.

2 Actually I have two more preliminary matters
3 before I get to the evidence, the first of which is
4 that, listening to Mr. Ciresi, you would think that
5 all the defendant tobacco companies have done is work
6 together over the years, but what you're going to
7 learn from the evidence in this case is that these
8 companies, who are represented by the lawyers sitting
9 here at this table, have been vigorous, often bitter
10 competitors over the years. In the 1940's my client,
11 Philip Morris, was the smallest tobacco company in
12 the country. Today it's the largest, and it got
13 there by taking business away from the other
14 defendants. And the companies have struggled with
15 one another, scratched and clawed for market share.
16 Especially as the market for cigarettes has been
17 declining all through these years, everyone's been
18 fighting for a share of a declining market. But
19 having said that, we know that none of you wants to
20 spend one more day in this courtroom than absolutely
21 necessary. Every one of us in this courtroom is
22 mindful of the tremendous burdens that this trial is
23 placing on some of you. Some burden on all of you,
24 but a very substantial burden on some of you. We
25 understand that. And unlike the rest of us who get

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1 paid for what we're doing here, you don't, and so
2 we're going to try very hard to be as efficient as we
3 can and we have, therefore, agreed to cooperate in
4 trying to present pieces of the case without
5 duplicating each other, without repeating each other,
6 and we're going to start that effort to be efficient
7 and to present pieces of the defense to you right
8 here today and tomorrow in our opening statements.
9 We're going to divide up the subject matters as fully
10 as we can so that we don't all get up and repeat
11 ourselves and you all are sitting there in the jury
12 box saying, "Oh, my God, he said the same thing the
13 one before him." We're going to try very hard to do
14 that.

15 Second matter that I wanted to raise

16 preliminarily with you is I want to say a word or two
17 about who the defendants in this case are. You heard
18 names of a lot of organizations, some of which I'm
19 sure meant absolutely nothing to you. I'm going to
20 let the counsel for the other major tobacco companies
21 who are going to also make opening statements here
22 describe their own companies to you, but I want to
23 say just a word or two about my own client, Philip
24 Morris, and I want to say a word or two about some of
25 the other defendants that are in this case.

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1 My client, Philip Morris, is, as Mr. Ciresi said
2 to you this morning, the manufacturer of Marlboro
3 cigarettes and a number of other cigarette brands.
4 It is today the largest cigarette company in the
5 United States. Hasn't always been true, but it is
6 today. Philip Morris is also a major food
7 manufacturer, it makes a lot of other products than
8 cigarettes, it makes Oscar Mayer meat products, for
9 example, it makes -- Kraft General Foods is part of
10 Philip Morris, Miller Brewing Company is part of
11 Philip Morris, and several of the other defendants
12 have affiliates in other businesses as well.

13 A word about defendant Liggett. Defendant
14 Liggett is a tobacco company. It was once a very
15 large tobacco company. It once had one of the
16 largest selling brands in the world, Chesterfield.
17 Some of you probably have heard of that brand either
18 from the old days or even today. Liggett has not
19 fared as well in recent years as some of the other
20 tobacco companies. They are today a very small
21 company. And in 1986 Liggett was purchased by a man
22 named Bennett LeBow, and you may see Mr. LeBow here
23 at trial, I don't know whether you will or not, but
24 you may see him here as a witness for the plaintiffs
25 in this case.

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1 I just want to make sure that as we begin the
2 evidence you all understand that defendant Liggett
3 has already entered into a settlement with the state
4 of Minnesota in this case in which they agreed to
5 cooperate with the state in the prosecution of this
6 case. So if and when you see Mr. LeBow in here
7 testifying, I want you to understand that he is in
8 many ways now on the side of the plaintiff. Won't
9 say anything more about it now. We'll see what
10 happens and -- and talk about it in closing argument.

11 The Council for Tobacco Research, the successor
12 to The Tobacco Institute -- Tobacco Industry Research
13 Committee, Mr. Ciresi described it this morning,
14 you're going to hear a lot more about The Council for
15 Tobacco Research through my colleague, David Bernick,
16 and perhaps from some of the other defense counsel in
17 this case. I just want for you to understand this
18 now because this is going to drag out over a long
19 time. But Council for Tobacco Research is not a
20 trade association, it is a research organization, and

21 it has done a lot of very high quality
22 smoking-and-health research, some of which was cited
23 in the 1964 Surgeon General's report and some of
24 which has been cited in Surgeon General's reports on
25 smoking and health since then. It is a quality

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1 research organization.

2 The Tobacco Institute is a trade association.
3 It does a lot of things. It represents the industry
4 in -- before the public. It expresses the industry's
5 views. It is in that respect very much like the
6 trade associations that represent every industry in
7 the United States. In some respects like unions.
8 There's nothing nefarious about having a trade
9 association, The Tobacco Institute.

10 Okay. Let's turn to the subject about which I'm
11 going to talk in my opening remarks, and I want to
12 tell you a little about the evidence you're going to
13 see on that subject, and the subject I want to talk
14 to you about is essentially where Mr. Ciresi left off
15 in his opening statement this morning, causation,
16 injury, what in fact are these wrongful acts that the
17 state and Blue Cross have charged the defendants
18 with. What effect, if any, have those acts had upon
19 the state's Medicaid, GAMC and Blue Cross's
20 health-care costs. That's what I want to talk about.

21 I don't mean to suggest for a moment that you're
22 not going to hear what our perspective, what the
23 defendants' perspective is on the evidence you will
24 see with respect to the industry's conduct. You will
25 indeed. You will hear from David Bernick on behalf

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1 of Brown & Williamson, you will hear from John Monica
2 on behalf of defendant Lorillard, you will also hear
3 from Bob Webber, counsel for R. J. Reynolds, who will
4 discuss with you in detail many of the specific
5 allegations that Mr. Ciresi talked about here this
6 morning.

7 It's going to be a long trial. You're going to
8 hear a lot of evidence. I want to make sure you
9 understand that all of those charges are not going to
10 go unanswered either in opening statements or in the
11 evidence.

12 But what I want to talk to you about is that it
13 is so critical to the determination that you have to
14 make when you leave this jury room whether the state
15 and Blue Cross are going to be able to prove that
16 they incurred increased health-care costs in these
17 areas.

18 Well let's start with the evidence that the
19 plaintiffs are going to offer. Mr. Ciresi said
20 they're going to prove -- while I won't remember them
21 all -- they're going to prove false advertising,
22 they're going to prove conspiracy, they're going to
23 prove suppression of research, they're going to prove
24 fraud, all of these things that the plaintiffs say
25 the defendants did that deceived people, that caused

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1 people not to understand the health risks of smoking.
2 Well let me ask you to ask yourselves a question.
3 You'll know the answer pretty soon. How are they
4 going to prove this? How are they going to prove
5 that smokers, who are Medicaid recipients or GAMC
6 recipients or Blue Cross insureds, were deceived?
7 Are they going to bring smokers in here? Mr. Ciresi
8 said this morning this wasn't about individual
9 smokers. But in a sense this case is about
10 individual smokers. It's about all of them lumped
11 together, at least all of them lumped together who
12 are Medicaid recipients, GAMC recipients or Blue
13 Cross insureds. Is the plaintiffs' side of the case
14 going to bring in any smokers to testify that they
15 were deceived? Well you can probably tell by my
16 asking that question that the answer to it is no,
17 they are not. They are not going to bring in one
18 single Medicaid recipient, one single GAMC recipient,
19 one Blue Cross insured, one smoker on those programs
20 or not. Not one. They're going to try to prove that
21 smokers were deceived by bringing in experts to
22 testify that what the defendants did was reasonably
23 likely to deceive, that it was calculated to deceive
24 and perhaps even that it did deceive, but they won't
25 bring in the people who were allegedly deceived, none

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1 of them. Not one.
2 And as you listen to this evidence I want you to
3 ask yourselves: How do we know, based on the
4 testimony of an expert who says it was likely to
5 deceive, whether it in fact deceived anyone? How do
6 we know whether it was all smokers who were Medicaid
7 recipients were deceived, or 90 percent, or 50
8 percent or 10 percent? How do we know that?
9 Keep that question in mind as you listen to the
10 evidence in this case because the plaintiffs are not
11 going to bring in anybody who can testify how many
12 were deceived, how much, when, or to what degree.
13 None of that. It's all going to be experts
14 testifying that they think it happened. That's the
15 evidence you're going to hear and see from the
16 plaintiffs. You're certainly not going to hear about
17 it from the statistical model that Mr. Ciresi talked
18 about right at the end of his opening statement this
19 morning. The people who developed that model are not
20 going to. We asked the people who developed that
21 model specifically when they testified on deposition
22 whether or not they knew whether or not they could
23 tell which people -- let me just quote to you, I
24 won't --

25 One of the experts who worked on the statistical
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1 model that the plaintiffs are going to offer here in

2 this case was asked in his sworn deposition, "Doctor,
3 I had just one question to kind of wrap up what we
4 were talking about immediately before the break, and
5 that was: Do you know whether plaintiffs would have
6 paid more or less money for health-care services if
7 defendants had not committed the wrongs that are
8 alleged in the complaint?

9 "Answer: No, I don't know that."

10 The other expert who worked on the model, whom
11 the plaintiffs have identified as a witness they're
12 going to call here at trial, was asked virtually the
13 same question and gave virtually the same answer.
14 That's the evidence that the plaintiffs are going to
15 offer to prove people were deceived.

16 Well, we're not going to stop by just arguing
17 that that's not good enough. We're going to offer
18 evidence in this case on behalf of the defendants to
19 counter the claim their experts made. We're going to
20 offer evidence that people were not in fact deceived.
21 No matter what you think about the defendants'
22 conduct, that people receiving Medicaid assistance in
23 the state of Minnesota, people receiving GAMC medical
24 health care in Minnesota, and Blue Cross of Minnesota
25 insureds, were not in fact deceived. That's what

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1 we're going to do.

2 Now how are we going to do this? We're going to
3 do this by demonstrating, with an enormous amount of
4 evidence, that the people of Minnesota, people like
5 you, have known about and have believed that
6 cigarette smoking is harmful for decades, for
7 decades, since long before this Medicaid program
8 existed, long time before this one existed. This one
9 didn't start until 1978. Before any of the issues in
10 this case were concerned, we're going to demonstrate
11 to you that public awareness and belief in the health
12 hazards of smoking, and addiction for that matter,
13 has been universal in this state. Now how are we
14 going to do this? Well first we're going to go back
15 in time, in history. Basically we're going to start
16 in about 1950 when the first of these retrospective
17 epidemiological studies that Mr. Ciresi talked about
18 this morning were done. In about 1950. We're going
19 to start there and we're going to move forward to the
20 time when the first Surgeon General's report was
21 issued in 1964, 15 years or so later, and tell you
22 about what happened. We're going to have witnesses
23 come in here -- lot of it will come out of the
24 plaintiffs' own witnesses, but we're going to have
25 experts of our own come in here and tell you what was

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1 going on, what was being publicized, where it was in
2 the newspapers and magazines during that period of
3 time.

4 But I want to start, before I even get to 1950,
5 by saying something to you that you're going to learn
6 from the evidence in this case that some of you may

7 be old enough to know, I'm not sure, but even in 1950
8 there were a lot of people who thought cigarette
9 smoking was bad for you. And as a matter of fact,
10 cigarette smoking has been condemned -- tobacco, the
11 use of tobacco, has been condemned for centuries on
12 health grounds. Centuries. People have thought that
13 the use of tobacco was bad for you.

14 Now if I could make this little gimmick work
15 here, I'll see how many of these exhibits I'm
16 actually going to use depending on how well I use
17 this. Christopher Columbus. Remember him? He wrote
18 in his journal, "I knew Spaniards on this island of
19 Espanola who were accustomed to take it" -- he meant
20 tobacco -- "and being reprimanded by telling them it
21 was a vice. They made reply that they were unable to
22 cease from using it." Unable to cease from using it.
23 1490.

24 There we go. Hundred plus years later, still
25 several hundred years ago, this was written by King

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1 James of England, the same King James responsible for
2 the King James version of the Bible. He wrote a
3 document called a Counter Blaste to Tobacco.
4 "Tobacco is a custom loathsome to the eye, hateful to
5 the nose, harmful to the brain, and dangerous to the
6 lungs." Promise I'm not going to go century by
7 century. But the fact of the matter is that the
8 attack on tobacco use has never stopped. Not in the
9 17th century, not in the 18th century, not in the
10 19th century, and certainly not in the 20th century.

11 Some of you who grew up in the '40s and '50s --
12 I knew we wouldn't get through this without some
13 technology glitch -- who grew up in the '40s and '50s
14 will remember cigarettes being referred to as coffin
15 nails or cancer sticks. Some of you may even
16 remember that back in 1948 there was a popular song
17 by a singer named Tex Williams called "Smoke Smoke
18 Smoke that Cigarette." I promise I won't try to sing
19 it to you. But there was a line in it called -- that
20 said, "Nicotine slaves are all the same." The fact of
21 the matter is, ladies and gentlemen, that even in
22 1950 there was a lot of suspicion and a lot of belief
23 that cigarette smoking was bad for you.

24 In 1949 there was a Gallup poll that showed that
25 52 percent of the people in the United States in 1949

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1 believed that cigarette smoking was harmful. What
2 I'm about to tell you now is about the evidence that
3 you're going to see and hear in this case concerning
4 what happened between 1950 and 1965 or so, because
5 when that was over, when that period was over and the
6 Surgeon General's report came out, that the awareness
7 and belief that cigarette smoking was harmful had
8 gone from a majority to just about everybody.

9 Okay. Let's -- let's take a look at 1950. Lot
10 of speculation, lot of suspicion, some scientists
11 believed even that there was evidence that cigarette

12 smoking caused disease, but not a whole lot in terms
13 of what we normally think of us as hard scientific
14 evidence.

15 Let me give you an example of what was said
16 about one very distinguished scientist in 1948. Dr.
17 Edward Churchill was a professor of medicine at the
18 Harvard Medical School in Cambridge, Massachusetts,
19 and he was the chief of surgery at the Massachusetts
20 General Hospital in Boston. Very distinguished
21 scientist. And he wrote in the Journal of the
22 American Medical Association in 1949, "Nothing is
23 known about the cause of the disease that can be
24 translated into effective prevention measures." And
25 if you read the rest of it, you'll see that he was

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1 talking about smoking. He was commenting on the
2 belief of some scientists that cigarette smoking
3 causes cancer.

4 An editorial in the Journal of the American
5 Association -- American Medical Association, same
6 year, "Extensive scientific studies have proven that
7 smoking in moderation by those for whom tobacco is
8 not specifically contradicted -- contraindicated is
9 not -- does not appreciably shorten life." This was
10 the state of the evidence in 1948, '49, '50. There
11 were scientists who thought that it probably did, but
12 there wasn't a lot of very solid scientific evidence.
13 Nevertheless, 52 percent of the American people
14 believed that it was harmful in 1950 anyway.

15 In that area, the first of the series of studies
16 was published. You heard Mr. Ciresi refer to them
17 this morning, they were retrospective epidemiological
18 studies, they were statistical association studies.
19 What they did is they followed people who had lung
20 cancer and people -- control people, and they found
21 an apparent statistical association between smoking
22 and lung cancer. The authors of this study were
23 careful not to assert that cancer causation had been
24 proven, but they certainly thought it was suggested.
25 And then a couple of years later, scientists did

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1 laboratory experiments, including one of the same
2 scientists who had done the statistical study a
3 couple of years earlier, and what they did is they
4 took mice, not human beings but mice, and they
5 painted condensate or tar of tobacco on the backs of
6 the mice, and a fairly high percentage of them, 40
7 percent of them, contracted tumors, not lung cancer,
8 but tumors. Once again, while the authors of that
9 study were very careful to say that this didn't
10 constitute proof that cigarette smoking causes lung
11 cancer, because mice aren't the same as people and
12 they didn't inhale, it was suggested.

13 Now those studies, those epidemiological studies
14 and those laboratory experiments received widespread
15 publicity throughout the United States and here in
16 Minnesota.

17 This is a collage of articles on smoking and
18 health that appeared in the period from 1950 to 1954
19 reporting on these very studies. These were, you
20 will learn, Reader's Digest, Life Magazine, U.S. News
21 & World Report, these are among the most popular news
22 magazines in the United States. You will probably
23 know that, except for photographs, Life Magazine
24 doesn't exist as a magazine any more, but believe me,
25 in the 1950s it was one of the most widely read

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1 magazines in the United States. And there were
2 articles about these in every one of these.

3 There were also articles about these in
4 newspapers across the country, and there were
5 articles in these -- well I don't have one from the
6 Minnesota papers right now, but you'll see articles
7 from the Minnesota papers at this same period of
8 time. They were in every newspaper in the country
9 about these studies. The article "Cancer by the
10 Carton" in Reader's Digest was one of the most
11 read -- widely read articles in the United States.

12 You're going to hear testimony during this trial
13 from Dr. Hy Berman of the University of Minnesota,
14 professor of history, who's done a thorough job of
15 studying all of the articles in newspapers and all of
16 the polls, all of the evidence that there is about
17 what people knew and heard and saw about the health
18 hazards of smoking in the United States generally,
19 but specifically here in Minnesota. You'll see Dr.
20 Berman testify at this trial and he will describe
21 this evidence to you.

22 Then in the middle and late 1950s, a new kind of
23 statistical study was done by a number of different
24 researchers. These were -- the others that I talked
25 about a few moments ago were retrospective studies,

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1 they looked back in time. These were prospective
2 studies. What they did here was they took a group of
3 people before anyone had contracted any disease and
4 they watched them going forward, and the ones that
5 had lung cancer, they would look to see whether or
6 not they smoked. And what these studies found is a
7 very high statistical association between cigarette
8 smoking and lung cancer.

9 These, too, received enormous publicity
10 throughout the United States in the same magazines,
11 Time Magazine, Life, U.S. News, Newsweek. I'll give
12 you a second to look at those and then I want to show
13 you some headlines from Minnesota papers during this
14 same period.

15 "Report on 188,000 man study." This was one of
16 those prospective statistical studies that I was
17 talking about reported in what was then the
18 Minneapolis Star.

19 Now what happened, what was happening during
20 this period of time when these studies were being
21 done, is there was a major debate going on in the

22 medical and scientific community about whether this
23 proved that cigarette smoking causes lung cancer and
24 other disease. There were scientists on one side of
25 the issue, there were scientists on the other side of

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1 the issue, and the evidence that you're going to see
2 in here, ladies and gentlemen, will not support an
3 argument that the defendants made up this
4 controversy. This was a real controversy, real
5 genuine science, and medical doctors were arguing
6 about it. Some of them thought it did prove smoking
7 caused cancer, some of them didn't, and the debate
8 was being played out in newspapers and magazines
9 throughout the country and as television was
10 becoming -- just becoming more of a news medium,
11 people like Edward R. Morrow, whom some of you will
12 remember, had programs on this at the time. But
13 television was just beginning to become a major news
14 medium during this period of time. This debate was
15 playing itself out on television as well, ladies and
16 gentlemen.

17 Let me show you how it played out during the
18 period leading up to the Surgeon General's report.
19 In 1957 the man who was then the Surgeon General of
20 the United States, Dr. LeRoy Burney, who was a public
21 health practitioner, personally was of the view that
22 cigarette smoking probably caused lung cancer, but he
23 didn't think the evidence was conclusive. And he
24 gave testimony before the United States Congress in
25 which he was asked to express his views, and he was

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1 asked to state whether he thought there should be a
2 warning about the health risks of smoking, and here
3 is what Surgeon General Burney said. The Surgeon
4 General of the United States said in 1957, "There is
5 a lot that is unknown in this area. It is a
6 controversial area, in which some well-known
7 scientists have opinions which differ from some of
8 the other people whom you have heard in these
9 hearings." And Surgeon General Burney went on to say
10 in this statement and elsewhere in his testimony that
11 he did not think that a warning at that time was
12 necessary or appropriate. He said, "We believe that
13 is as far as we should go at this time until and when
14 we have additional information."

15 Now even Surgeon General Burney's personal view
16 that cigarette smoking probably causes lung cancer,
17 which he had expressed on occasion, was disputed.
18 For example, it was disputed in an article in the
19 Journal of the American Medical Association in 1959
20 by Dr. Joseph Burkson, who was at the time a
21 physician with the Mayo Clinic here in Minnesota.
22 This was still a controversy. And because there was
23 so much controversy about whether cigarette smoking
24 caused cancer, in 1962 the new Surgeon General of the
25 United States, Dr. Luther Terry, Dr. Luther Terry,

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1 decided to appoint an expert committee of physicians
2 and scientists from around the country to study all
3 of the evidence and make a report to him on the
4 evidence with regard to smoking and health, and he
5 picked as the members of this committee people who
6 had not expressed publicly a view one way or the
7 other about smoking and health. These were not
8 people who worked for the tobacco companies, this
9 was -- these were public officials who had looked at
10 all the evidence. And you're not going to hear any
11 evidence that came out of the cigarette companies
12 that cigarette smoking had been proven to cause
13 cancer in the 1950s either. This was still a very
14 controversial area. Surgeon General Burney appointed
15 this committee and they spent two years and they
16 reviewed every one of these studies that Mr. Ciresi
17 and I have talked about, every article, every
18 journal, every piece of research they could get their
19 hands on, and in 1964 they issued what is now known
20 as the 1964 Surgeon General's report, the famous 1964
21 Surgeon General's report.

22 This is a foreward from the 1964 Surgeon
23 General's report. The Surgeon General of the United
24 States, recognizing that few medical questions have
25 stirred such public interest or created more

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1 scientific debate than the tobacco-health
2 controversy, he recognized that in the foreward to
3 the Surgeon General's report, nevertheless, the
4 findings that this independent group of scientists
5 and doctors made was that cigarette smoking was
6 causally related to lung cancer in man, among other
7 things. This is a summary of the principal findings
8 of the 1964 Surgeon General's report.

9 So what you have is in 1949, 52 percent of the
10 American people already believed that cigarette
11 smoking is harmful to health. We don't have a poll
12 for 19 -- for Minnesota in 1949, but on a nationwide
13 basis you have 52 percent of the people in the United
14 States believing that smoking is harmful to health.
15 Then you have a whole series of studies and evidence
16 culminating in the work of the Surgeon General's
17 committee in the 1964 Surgeon General's report
18 concluding that it had been proven that cigarette
19 smoking causes lung cancer and some other diseases.

20 Believe me, this report was seen by everybody.
21 It was publicized in every major news magazine in the
22 United States, again, Time, Life, Reader's Digest,
23 Newsweek. It was published in every major newspaper
24 in the United States -- oops, wrong one -- published
25 on the front page of the Minneapolis Sunday Tribune,

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1 "Report Partially Indicts Cigarette Smoking." It was
2 reported on the front page of the St. Paul Sunday

3 Pioneer Press, "Government Action Urged on
4 Cigarettes." And there have been thousands and
5 thousands of articles about the Surgeon General's
6 report, about cigarette smoking causing disease ever
7 since.

8 Now what effect did all of this have on people's
9 belief -- awareness and belief about the health
10 hazards of smoking? Remember when I told you that in
11 1949, 52 percent of the American people believed that
12 cigarette smoking was harmful for your health? What
13 I have here is some polls that are Minnesota-specific
14 polls.

15 Everyone see that? I'll hold it up. Here, I'll
16 hold it up.

17 In 1964 when the Surgeon General's report was
18 issued, 80 percent of Minnesotans believed smoking is
19 hazardous to health. By 1969 that number had gone up
20 to 93 percent. By 1970, still 28 years ago, that
21 figure was up to 95 percent. And what you're going
22 to learn from Dr. Berman and other witnesses in this
23 case is when 95 percent of the people believe
24 something, that's basically universal awareness
25 because you almost never have more than 95 percent of

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1 the people believe anything. That is essentially
2 universal awareness in the state of Minnesota,
3 universal awareness and belief no later than 1970, 28
4 years ago, before the GAMC program existed, only a
5 couple of years after the Medicaid program started,
6 virtually everyone in Minnesota believed.

7 Now the fact of the matter is is that you'll see
8 evidence of this. The people of Minnesota were
9 especially well educated about the health risks of
10 smoking because the state of Minnesota had believed
11 that cigarette smoking was hazardous to the health
12 since long before 1950 and had been teaching it to
13 the school children in Minnesota.

14 Remember when Mr. Ciresi talked this morning
15 about going in discovery into the files and records
16 of the defendant tobacco companies? Well the
17 defendants did the same thing. Discovery is a
18 two-way street in cases like this. The defendants
19 went into the files and records of the state of
20 Minnesota going back a long ways, and what we found
21 is the state of Minnesota was teaching the school
22 children of Minnesota that smoking is bad for you a
23 hundred years ago. A hundred years ago, ladies and
24 gentlemen.

25 In 1893 the Minneapolis public schools

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1 recommended a textbook that taught how tobacco
2 affects the growth of bones, the bad effects of
3 tobacco, the effects of alcohol and tobacco on
4 circulation,. Going back a hundred years ago, ladies
5 and gentlemen.

6 There we go. In 1908, the state Department of
7 Education recommended a textbook that taught how

8 tobacco harms. Look at the second point there. "The
9 use of cigarettes makes one more a slave to the drug.
10 The continuing use of tobacco decreases very markedly
11 the lung capacity." It refers to nicotine, an
12 injurious effect on the heart, in 1908.

13 In 1919 the textbook used in Minnesota had a
14 section called "Making the Most of Life." It talks
15 there in the first paragraph about the amount of
16 nicotine, "The seriousness of the effects produced
17 was in proportion to the amount of nicotine contained
18 in the tobacco that was used." And the last
19 paragraph it says, "Smokers often die of heart
20 collapse...."

21 Well I can't get that one to work. But a
22 curriculum for elementary schools put out by the
23 Department of Education in 1928 described the harmful
24 effects on body, heart, nervous system of tobacco
25 that insures delicate lining of the nose, throat and

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1 lungs, and said "Use is costly." There it is. 1928.

2 1935, the textbook used in Minnesota, "Tobacco
3 is a Poison." 1944, "What is the effect of tobacco
4 smoking on personal efficiency and appearance?" Look
5 at paragraph one. "The smoking of tobacco is today
6 the most popular drug habit in the world and is
7 likewise one of the strongest of the addictions." In
8 1944, school children of Minnesota were being taught
9 that cigarette smoking is an addiction. Habitual use
10 of tobacco produces harmful body effects.

11 1949, this was a text used by the Minneapolis
12 public schools, "The Study of Alcohol and Markets."
13 Tobacco is included there as a narcotic. Describes
14 tobacco as one of the most frequent causes of sudden
15 death and has a section on addiction.

16 1958, habit-forming drugs.

17 The fact of the matter is, ladies and gentlemen,
18 that there has not been a point in time in the last
19 hundred years when the harmful effects of tobacco
20 haven't been believed in by the state of Minnesota
21 Department of Education and taught to the school
22 children of Minnesota, and that is undoubtedly one of
23 the reasons why so many Minnesotans believed by 1965
24 and -- and thereafter that smoking was harmful to the
25 health.

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1 In 1983 and 1984, the Department of Education
2 developed a comprehensive new plan for dealing with
3 smoking and health. I'll get it up here in a minute.
4 There we go. The Minnesota plan for non-smoking and
5 health, report and recommendations of the technical
6 advisory committee on non-smoking and health. This
7 plan made 39 separate recommendations for education
8 in the public schools, "Provide six or more hours of
9 scientifically evaluated non-smoking education in
10 seventh grade. Evaluate the use of non-smoking
11 contests. Regulate smoking in schools. Reinforce
12 school efforts through community programs." You had

13 a bunch of recommendations for promotion of
14 non-smoking through traditional marketing and
15 communication techniques. Conduct a long-term public
16 communication campaign to market non-smoking. Public
17 and private regulatory measures, 39 separate
18 recommendations. The plan made recommendations for
19 economic incentives and disincentives, like
20 increasing the state excise tax on cigarettes. This
21 recommendation in large measure was approved by the
22 Minnesota legislature and became a part of law in
23 1985. A specific program was set up, administrators
24 were established, salaries were paid to discourage
25 smoking and educate people about the dangers of

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1 smoking.

2 Now let me talk for just a moment about Blue
3 Cross Blue Shield, because I don't want to leave them
4 out, because the evidence that you will see and hear
5 in this case will establish that Blue Cross Blue
6 Shield has believed that it was a hard fact that
7 cigarette smoking had been proven to cause disease
8 for a long, long time. In 1984 the CEO of Blue Cross
9 Blue Shield of Minnesota, Andrew Czajkowski, made a
10 speech to the Association of Non-Smokers Rights in
11 which he said as far as Blue Cross and Blue Shield of
12 Minnesota is concerned, the debate on smoking is
13 closed and should have been closed years ago.

14 Remember this morning when Mr. Ciresi talked
15 about taking deposition testimony of people before
16 trial? Well it wasn't just the plaintiffs who took
17 depositions before trial, the defendants took sworn
18 depositions of people before trial too. We took the
19 deposition of a representative of Blue Cross Blue
20 Shield. Blue Cross Blue Shield believed that smoking
21 was harmful to health a long time ago.

22 Now the fact is that the evidence that you're
23 going to see and hear in this case is going to
24 establish that at least since the mid- to late 1960s,
25 before this program existed and around the time this

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1 program was started, virtually every one in Minnesota
2 believed that cigarette smoking was harmful and had
3 been taught it in the Minnesota public schools and
4 had been taught in the Minnesota schools that
5 cigarette smoking was addictive as well. As a result
6 of this universal awareness in Minnesota and
7 elsewhere, what you're going to learn and many of you
8 probably already know is that millions and millions
9 and millions of Americans have quit smoking, addicted
10 or not. Millions have quit smoking. The estimates
11 of how many Americans have stopped smoking since the
12 1964 Surgeon General's report range as high as 40 to
13 50 million people have stopped smoking. You will
14 hear evidence that there are more non-smokers -- or
15 ex-smokers in the United States today than there are
16 smokers.

17 The educational program conducted by the

18 Minnesota Department of Education and other Minnesota
19 authorities has worked. In many respects it has
20 worked. The federal program, the parallel federal
21 program which consisted of requiring that a health
22 warning be placed on every cigarette pack sold in the
23 United States since 1966, every pack sold since 1966
24 has contained a health warning, it has worked in the
25 sense that it has encouraged millions upon millions

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1 of people to stop smoking and encouraged many, many
2 people never to take it up in the first place.

3 What we will argue to you at the conclusion of
4 the case when you have heard all of the evidence is
5 that no smoker who was a Medicaid recipient, no
6 smoker who was a GAMC recipient, no smoker who's a
7 Blue Cross insured, has been deceived, misled by any
8 improper conduct by the defendant tobacco companies.

9 What Minnesota and the federal government and
10 many other states have attempted to do in
11 discouraging smoking and educating people about the
12 health hazards of smoking has worked, and ladies and
13 gentlemen, that's all these programs were designed to
14 do. These programs weren't designed to make people
15 stop smoking, they were designed to encourage people
16 to stop smoking, slowly by surely to get rid of
17 smoking in this society. But they never made it
18 unlawful. It is a legal product.

19 Interestingly enough, Minnesota did have a law
20 that banned the sale of cigarettes for a time around
21 the turn of the century, a number of states did, and
22 in 1913 that law was repealed, and since 1913 the
23 sale and use of cigarettes in the United States has
24 been lawful and it's lawful today, and it's lawful
25 today and it has been lawful through all of this

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1 period of time that we're talking about in this case
2 since 1950. Even though the state of Minnesota has
3 known about and believes that cigarette smoking is
4 harmful to health, nevertheless, the sale and use of
5 the product in this case remains a lawful activity.

6 In the 1984 plan that I talked about a few
7 minutes ago, the Minnesota Department of Education
8 recognized that there were health costs associated
9 with smoking. They estimated what those health-care
10 costs were. But the recommendations of the technical
11 advisory committee were not to stop -- make smoking
12 unlawful; on the contrary, they were -- the
13 recommendations were to discourage smoking, to
14 educate, to protect non-smokers, but the sale of
15 cigarettes would continue to be allowed and indeed
16 taxed. Taxed. And the sale of cigarettes is in fact
17 taxed and has been since 1947 in this state and in
18 almost every other state, and by the federal
19 government.

20 In the very Minnesota plan, when the technical
21 advisory committee was talking about economic
22 strategies and incentives and disincentives, one of

23 them was to increase the cigarette tax to reduce
24 levels of smoking but maintaining or raising
25 revenues. Not to eliminate, not to outlaw, but to
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1 reduce levels of smoking.
2 The committee recommended a moderate price
3 increase to decrease cigarette consumption but
4 increase cigarette tax revenue. The committee
5 recommended a 10-cent-per-pack increase in excise
6 taxes, and the fact of the matter is that the state
7 has collected hundreds of millions of dollars in
8 excise taxes on cigarettes over the past years.
9 Now let me make something absolutely clear,
10 ladies and gentlemen. The defendants are not
11 suggesting for one moment that the choices that the
12 state of Minnesota has made are wrong. Not for a
13 second. The defendants are not suggesting that the
14 state of Minnesota shouldn't have levied excise taxes
15 or that they should have been higher or lower. The
16 defendants are not suggesting that the state should
17 ban advertising or ban the sale of cigarettes. That
18 is the state's prerogative to do what it wants. The
19 point that I am making is that the state of Minnesota
20 has known and has taught its citizens for a long,
21 long time about the health hazards of smoking and the
22 health-care costs associated with smoking. Now my
23 point be being that no one, least of all Blue Cross
24 and the state of Minnesota, have been deceived about
25 the health hazards of smoking, but neither have the

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1 citizens of Minnesota. And they have not smoked
2 because of the illegal acts that the plaintiffs claim
3 the defendants have engaged in.
4 Now my colleagues, John Monica, David Bernick
5 and Bob Webber, are going to talk to you in a few
6 moments about the response of the tobacco industry to
7 the debate and the controversy that arose in the
8 1950s, and the actions that the tobacco industry, the
9 tobacco companies took to that conduct -- to that
10 controversy, especially the industry -- how the
11 industry responded lawfully and responsibly by doing
12 extensive research on smoking and health and by
13 spending hundreds of millions of dollars attempting
14 to develop new products that would address the health
15 concerns of people about smoking. But before I do, I
16 want to address very briefly a second reason why the
17 evidence in this case will show that the
18 defendants -- the plaintiffs are not entitled to
19 recover any damages in this case.
20 Remember I said earlier that the plaintiffs
21 would fail to prove that they have incurred any
22 increased health-care costs in these programs -- and
23 that's all this case is about -- as the result of the
24 defendants' allegedly unlawful conduct. Well what
25 I'm going to tell you now is that the evidence will

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1 show not just that, but the evidence in this case
2 will show the state and Blue Cross cannot prove any
3 increased health-care costs in these three specific
4 programs as the result of smoking. Get the
5 difference? What they're claiming is that the
6 health-care costs incurred in these programs have
7 been increased by the defendants' unlawful conduct,
8 but what I'm going to tell you is they will not even
9 prove that their health-care costs in Medicaid, GAMC
10 and Blue Cross has been increased by smoking. That
11 may surprise you. You may say are you really saying
12 that? Is he really saying what I think I hear him
13 say? And let me make sure that you understand when I
14 say this that I -- I am not saying and the defendants
15 are not saying that smoking lowers medical costs.
16 What I'm saying is that this case is about these
17 three programs, and the evidence will not show that
18 the health-care costs of the plaintiffs have been
19 increased in these three programs by smoking.

20 Now what is the evidence that the plaintiffs are
21 going to offer in this case to show that they are?
22 Well here is where the statistical model comes into
23 play that Mr. Ciresi talked about more about 30
24 seconds at the beginning of his opening statement
25 this morning. Plaintiffs' experts are going to come

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1 in here and tell you that you should find that the
2 state has incurred 1.3 billion dollars in increased
3 health-care costs, and Blue Cross 460 something
4 million dollars as the result of smoking, and there's
5 a very fundamental flaw in how they came up with that
6 number. How they came up with a number, there is a
7 fundamental flaw, and that flaw is they didn't look
8 at the right people. They didn't look at -- when
9 they calculated this number, they didn't look at
10 Medicaid people, GAMC people, Blue Cross people in
11 Minnesota. What they based their statistical
12 estimate on was a National Medical Expenditure
13 Survey. In fact that's what it's called. The
14 National Medical Expenditure. Not Minnesota, not
15 Medicaid, not GAMC and not Blue Cross.

16 Now does it make a difference? You bet it makes
17 a difference. But before I tell you how it makes a
18 difference and how the evidence is going to show what
19 an enormous difference it makes, I need to take just
20 a second to tell you a little bit about what you're
21 going to learn Medicaid and GAMC are, because we've
22 been talking about this here for a long time and
23 nobody's told you what it is. You'll hear from
24 experts in this case on both sides what the programs
25 are.

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1 Medicaid is a joint federal and state program
2 established by the United States Congress in 1965.
3 States were given an option whether to participate in

4 the program or not. Minnesota adopted the Medicaid
5 program not too long after the program was enacted by
6 Congress in 1966. Under this program the federal
7 government pays 55 percent of the covered costs, the
8 state pays 45 percent. The state had a option to
9 join this program, and it exercised the option to
10 participate in the program. It didn't have to, it
11 made a decision, and it made a decision in 1965 and
12 1966 knowing what I've told you the evidence was
13 going to show it knew and believed about the
14 health-care costs that are associated with smoking.

15 Okay. Minnesota decided to participate, but
16 what does it cover? Well it's very limited. It's
17 actually very limited. It covers a few very specific
18 groups of people. It covers pregnant women who need
19 medical assistance, it covers young children and
20 their mothers, it covers the disabled -- people who
21 have been hurt in accidents and the like -- and it
22 covers a limited segment of the elderly. Now I say a
23 limited segment of the elderly because as I'm sure
24 many you know, the principal medical program for the
25 elderly is Medicare. That's a different program,

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1 different federal program. Medicaid covers a limited
2 group of elderly people, by and large people in
3 nursing homes. So what you really have here is you
4 have the disabled, you have pregnant women, you have
5 young children and their parents, and you have people
6 in nursing homes who are in need of medical
7 assistance.

8 Okay. GAMC. This is the same state program,
9 entirely a state program. The state adopted this
10 program, like the Medicaid program, but it's
11 completely within the state's control and the state
12 bears all of the costs. It was adopted in 1978.
13 State has complete control over who is covered, what
14 benefits will be provided, and it adopted this
15 program in 1978 knowing and believing that there were
16 health-care costs associated with smoking.

17 Blue Cross I don't think I need to tell you much
18 about, it's an insurance company. You pay premiums
19 and Blue Cross reimburses you for the expenses that
20 are covered under -- under your policy.

21 Okay. Those are the programs. Now let's go
22 back to what I said earlier, which is the
23 defendants -- the plaintiffs' experts, when they put
24 together their damage model attributing these costs
25 to smoking, looked at the wrong people. They didn't

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1 look at Medicaid recipients, didn't look at GAMC
2 recipients, they didn't look at Blue Cross insureds,
3 and they didn't do a sample of Medicaid or GAMC
4 recipients. They used a national population, people
5 at large. But people are different. People in
6 Minnesota are different from people in California,
7 people on Medicaid are different from people who
8 aren't on Medicaid, and people on the GAMC program

9 are different. Their medical problems are different,
10 their lifestyles are different, their disease risks
11 are different, very different. And because the
12 plaintiffs' experts looked at the wrong people and
13 used the wrong people in their damage estimate in
14 their statistical model, they got the wrong answer.

15 Defendants' experts did look at the right
16 people. You'll hear from the defendants' experts in
17 this case. They will come here and testify and they
18 will be subject to cross examination. Defendants'
19 experts did look at the right people, and do you know
20 how they did it? They found right there in that
21 National Medical Expenditure study a subset of people
22 who are Medicaid recipients. Defendants' experts did
23 what plaintiffs' experts chose not to do, they looked
24 at Medicaid recipients, not the national population
25 at large. And what they found is that smokers in

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1 Medicaid don't cost more than non-smokers and smokers
2 in GAMC-like programs don't cost more than
3 non-smokers.

4 Now why is this true? Well, I'm not going to
5 speculate about it, but what I will tell you is that
6 the evidence will show that the people who are
7 receiving Medicaid by and large consist of people who
8 are less fortunate than the rest of us, they're the
9 sick, they're the disabled, they're people with a
10 host of medical problems.

11 This is a table summarizing some data that you
12 will see when the defendants' experts testify.
13 People on Medicaid and GAMC programs spend 3,556
14 dollars on medical costs. People who are not spend
15 1457 dollars. I'm sure that doesn't come as a
16 surprise to you. There are people that have medical
17 needs. That's part of the problem here; that is,
18 they are already people with medical problems that do
19 not exist in the population at large. And it means
20 that using data from the national population at large
21 is misleading and not meaningful.

22 Defendants' experts looked at people on Medicaid
23 in that National Medical Expenditure study and found
24 a lot of very interesting things. One of the things
25 was that the incidence of disease between smokers and

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1 non-smokers in the Medicaid population was not
2 significantly different. Look at this table. What
3 it will show is that for anybody who's on Medicaid,
4 the incidence of disease -- and we're not talking
5 about health-care cost now, we're just talking about
6 incidence of disease -- non-smokers 88 percent, very
7 high percentage -- I mean smokers, 88 percent, very
8 high percentage of smokers needed medical assistance
9 and had diseases, but non-smokers is 91 percent.
10 Smoking-related diseases, and by that I mean the
11 diseases that the Surgeon General has identified as
12 those which are associated with smoking, the
13 incidence of those kinds of diseases as between

14 smokers and non-smokers was virtually nil, it's 56
15 percent smokers, 57 percent non-smokers. Neoplasms,
16 that's cancers, the percentage of Medicaid recipients
17 who were smokers who had cancer was 7.76 percent, the
18 percentage of non-smokers was slightly less, but not
19 significantly, at 7.65. Circulatory disease, heart
20 disease, another one of the diseases attributed to
21 smoking, the incidence was 44 percent among smokers
22 but higher among non-smokers. There was not a
23 significant difference.

24 The defendants will tell you -- defendants'
25 experts looked for what is the key issue in this

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1 case: Do smokers on Medicaid and GAMC actually cost
2 more? And what they found, using data with Medicaid
3 and GAMC-like recipients from the same study that the
4 plaintiffs used, it said smokers do not cost more
5 than non-smokers.

6 Now defendants' experts checked in a number of
7 different ways to make sure that it was reliable.
8 They checked, for example, to see if there was a
9 difference between sexes, do women smokers have more,
10 or non-smokers, they found no difference. They did
11 their own statistical model, they found no
12 significant difference. Defendants' experts even
13 found a way to look at Minnesota Medicaid recipients.
14 There was no cost data available, but what there was
15 available was data showing the number of doctors'
16 visits and the number of hospital stays, and they
17 found no material difference between non-smokers and
18 smokers in terms of the number of doctors visits per
19 year or the number of hospital stays. No matter how
20 they looked at this data, ladies and gentlemen, they
21 came up with the same conclusion, which is that
22 smokers in these programs do not cost more than
23 non-smokers, and that's what this case is about.

24 If they had looked, if the plaintiffs had looked
25 at this data instead of relying on nationwide data as

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1 a whole, they would have come up -- come up with the
2 same answer: No difference.

3 Now let me make absolutely clear once again what
4 the defendants are saying and what they are not
5 saying. The defendants are not saying that smoking
6 reduces medical costs. We're not saying that there
7 are no medical costs associated with smoking. Not
8 claiming that. That's not a issue in this case. The
9 issue in this case is: Are there medical costs,
10 increased health-care costs in these programs
11 attributable to smoking? And the answer that you
12 will hear when you see all of the evidence in this
13 case is that the answer is no.

14 Now don't take my word for it because I'm doing
15 the same thing Mr. Ciresi did. I'm telling you what
16 the defendants believe the evidence is going to show.
17 You're going to see -- the plaintiffs' experts are
18 going to get up on that witness box and they're going

19 to be sworn and they're going to tell the truth, and
20 they're going to be examined by Mr. Ciresi and his
21 colleagues, and when they're finished we're going to
22 have our shot at them and we're going to
23 cross-examine them, and when they're all finished and
24 the defense time comes to put on our case, we're
25 going to put our experts up there on the witness

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1 stand and we're going to ask them these questions,
2 and the plaintiffs' counsel are going to get up and
3 they're going to cross-examine. And you know what
4 else, ladies and gentlemen, both sides have already
5 taken the depositions of these people. You're going
6 to have all of this evidence presented to you
7 thoroughly and completely. Nobody's going to hide
8 anything. Nobody's going to be able to. All I'm
9 asking you to do right now is keep an open mind about
10 this because the defendants believe that when you've
11 heard all of the evidence and you've heard all of the
12 cross examination by both sides, you're going to find
13 that what I'm saying is right, which is that smokers
14 in these programs do not cost more than non-smokers,
15 and that Blue Cross can't prove that smokers in its
16 program cost more than non-smokers. That's what
17 we'll argue to you at the end of the case based on
18 the evidence you've heard. And if that's true, if
19 what I'm saying to you is true, that smokers don't
20 cost more than non-smokers in this case, in these
21 programs, then the state and Blue Cross are not
22 entitled to recover any damages. And it doesn't make
23 any difference, ladies and gentlemen, whether you
24 don't like smoking, you don't like tobacco companies,
25 whether you think the tobacco companies have behaved

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1 badly or foolishly, it doesn't make any difference
2 what you think about any of those issues, because
3 when you go into the jury room to deliberate, the
4 question you're going to be asked is what's the
5 answer to that question? More or no more? And if
6 the answer is no more, no increased health-care
7 costs, as I'm suggesting to you the evidence will
8 establish, then you'll come back from the jury room
9 with a verdict against the state and for the
10 defendants.

11 Thank you.

12 THE COURT: We'll take a short recess.

13 THE CLERK: Court stands in recess.

14 (Recess taken.)

15 (In chambers proceedings.)

16 THE COURT: What do we have?

17 MR. CIRESI: Two tissues, Your Honor. I
18 just saw the exhibit that Mr. Monica is going to use
19 in his opening, and there's two categories. One,
20 there are excerpts from Medicaid depositions which is
21 an issue that's, I think, before the court at the
22 present time, is pending, and I believe is
23 inappropriate to use excerpts from those depositions.

24 My understanding is that until the court orders, they
25 were only to be used for discovery purposes.

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1 Number two, he has a set of demonstratives that
2 relate to Pepsi, McBurgers, Playtex something, other
3 products totally unrelated to cigarettes, and
4 apparently they think there's some relevance to that
5 to this lawsuit. I don't think there is and I think
6 it's inappropriate to put those in front of the jury
7 in an opening statement when they're not going to be,
8 at least in our judgment -- if the court rules
9 otherwise then they are -- but in our judgment at
10 this point they're not relevant to this cause of
11 action. We're not talking about advertising of Pepsi
12 or advertising of Big Macs, we're talking about
13 advertising of cigarettes.

14 MR. MONICA: Your Honor --

15 THE COURT: Okay. Go ahead.

16 MR. MONICA: Thank you.

17 With regard to the advertisements, these
18 advertisements will be referred to by our experts and
19 they are quite relevant. They're relevant to the
20 issue of the power of advertising. One of the issues
21 in this case is whether advertising causes youth,
22 young people to start smoking, whether advertising
23 causes people in general to begin smoking.

24 These particular three that Mr. Ciresi mentioned
25 are the Pepsi, the Edsel and the deluxe McDonald's

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1 burger. All are instances where advertising failed
2 miserably after millions of collars of expenditures.
3 These will be used by our experts to make the point
4 that advertising is only one piece of information
5 that consumers receive, and that advertising cannot
6 make people buy products that they don't want to buy
7 anyway. That's one set of advertisements.

8 There is also a second set, Your Honor, which
9 deals with old advertisements. We have --

10 THE COURT: Deals with what? I'm sorry.

11 MR. MONICA: Old, old types of
12 advertisements from bygone eras, if you will. And we
13 have been given notice through their exhibit list
14 that they plan to use some old cigarette ads. In
15 particular I think they've given us some old Kent
16 ads, some old Old Gold ads, and these ads are very
17 old, and with these -- the second set of
18 advertisements that we plan to use we're going to
19 show that in different eras there was a different
20 standard as far as what one would see in
21 advertisements, and it was a different time, a
22 different era, if you will, and not only the
23 cigarette companies but other companies selling other
24 products advertised their products in a different way
25 and said different things about the products, to try

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1 to give the jury a feel for the unfairness, if you
2 will, of comparing -- holding the tobacco companies
3 to today's standards when you're talking about really
4 old advertisements.

5 THE COURT: What kind of advertisements are
6 they specifically?

7 MR. MONICA: These are advertisements --

8 THE COURT: I don't want us to start trying
9 Coca-Cola's advertising campaigns. I mean I can see
10 where we can --

11 MR. MONICA: I can show them to you, Your
12 Honor.

13 THE COURT: Yeah, maybe I better look at
14 them. We've got enough to try here. I don't want to
15 start trying different lawsuits.

16 MR. CIRESI: Your Honor, that raises
17 another issue based on what Mr. Monica has just said.
18 He wants to show what other companies were doing. We
19 haven't had any discovery on Pepsi or McDonald's. We
20 don't know what they intended to do, whether their
21 advertising was effective or not.

22 MR. MONICA: Your Honor, here I'm handing
23 you the advertisements on the older ones, and again,
24 these advertisements will be relied upon and
25 discussed by our advertising expert.

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1 THE COURT: Well how can I not let you show
2 Rita Hayworth?

3 (Laughter.)

4 MR. CIRESI: We don't mind the picture of
5 just Rita Hayworth, Your Honor. You can cut around
6 it.

7 THE COURT: It's about all it is.

8 MR. MONICA: Your Honor, there are
9 advertisements there on various type of meat, bacon,
10 rib roasts or whatever you -- there are
11 advertisements showing use of physicians and nurses
12 to advertise products. These are the types of
13 advertisements we believe the plaintiffs were going
14 to single out for us, and we wanted to put them in
15 context.

16 THE COURT: That I don't have any real
17 problem with, the advertisements. I just don't want
18 us to get into those -- I don't want to get into
19 issues about whether -- what other companies are
20 doing, why they did it, what resulted from it. But
21 if you just want to use those advertisements for
22 demonstrative purposes, I don't really have a problem
23 with it.

24 MR. MONICA: That's all we wanted to do,
25 Your Honor.

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1 MR. CIRESI: Is that without commenting on
2 the fact that these products failed, this advertising
3 campaign failed and it wasn't successful?

4 THE COURT: I don't know how you can say

5 that. You're not going to bring anybody in. I mean
6 I don't know if you're qualified to say that. Is
7 your expert going to say that?

8 MR. MONICA: Your Honor, our expert will
9 say that no matter how much you spend on advertising,
10 advertising cannot cause people to buy a product if
11 the product itself is not one that consumers want.
12 And we have three different advertisements on that.
13 One as I mentioned is on the Edsel, the other one is
14 on Crystal Pepsi, and the other one is on the McLean
15 Deluxe hamburger. And what I intended to say is here
16 are three products that you don't drive, don't drink
17 and don't eat because advertising was unsuccessful
18 for these three products. So when plaintiffs tell
19 you that advertising can cause people to buy
20 cigarettes, you have to keep in mind what the power
21 of advertising is and what its limitations are, and
22 then discuss what our experts are going to testify to
23 on the limitations on advertising.

24 THE COURT: I am concerned and I have some
25 doubts whether your expert is going to be able to

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1 analyze the success or failure of a foreign product
2 that he's not able to provide evidence on outside of
3 an advertisement and a result. That's a pretty big
4 leap for any expert. If he's going to get on the
5 stand and testify that the Edsel had great
6 advertisements but failed for a certain reason,
7 unless the guy worked for Edsel, he might have
8 trouble testifying to that.

9 MR. WEBBER: Judge, if I could address this
10 just for a minute.

11 THE COURT: Sure.

12 MR. WEBBER: Bob Webber. The way we've
13 split this up is a story that I'm sure the court
14 doesn't want to hear, but actually --

15 THE COURT: No, I don't.

16 MR. WEBBER: -- I'm going to put Dr. Faber
17 on the stand, and he's a professor from the
18 University of Minnesota, and he's the one that's
19 going to deal with these issues.

20 THE COURT: All right.

21 MR. WEBBER: And he has, for example,
22 looked at that McLean Deluxe ads. He's on this panel
23 that judges ads nationally and one the points he's
24 going to make is this is a great ad campaign, but
25 great ad campaigns don't make people do things they

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1 don't otherwise want to do, and this is known within
2 his area of expertise. It's a classic example of an
3 ad campaign for a product people just didn't want,
4 and it's just an example he's going to use about how
5 companies that are very sophisticated in marketing
6 can't make people do things those people don't want
7 to do.

8 MR. CIRESI: Then we're going to be trying
9 every single product.

10 MR. WEBBER: No.
11 THE COURT: You're getting a little too --
12 I don't have a problem here using the exhibit
13 for demonstrative purposes, and I don't have a
14 problem if this guy gets up and says advertising
15 isn't everything. And there's some -- sometimes you
16 can advertise a lot and it doesn't get you anywhere,
17 but you're not going to be able to -- he's not going
18 to be able to testify as to the reasons for the
19 failure of a particular product because he doesn't
20 know and I don't know and you don't know, and the
21 only people that really know probably are the former
22 employees, the executives of Edsel.
23 MR. MONICA: Your Honor, I think --
24 THE COURT: So you're going to have to be
25 very cautious. I want to say I don't have a problem
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1 of you using these things, but you're going to
2 probably be limited on what that expert's going to be
3 able to testify. So if you hit just the top or the
4 highlights, you won't have a problem, but you're not
5 going to be able to get into any detail.
6 MR. MONICA: Your Honor, I'll keep it very
7 brief on these and I will just show them and say a
8 few words about them and go on then.
9 THE COURT: Okay. All right.
10 MR. MONICA: Then on the other --
11 THE COURT: Then when the expert gets on
12 the stand, I'm sure there are going to be objections
13 and I'll have to rule as he tries to testify.
14 Yeah.
15 MR. MONICA: Your Honor, that then leads to
16 the issue of the Medicaid recipient depositions.
17 THE COURT: Right.
18 MR. MONICA: We do have quotes from four or
19 five of these depositions as to whether or not
20 advertising played any role in the particular
21 person's --
22 THE COURT: No quote, because you're not
23 going to be able to get the --
24 The Medicaid depositions, they're not coming in
25 as such. And the order is issued. I don't know if
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1 you have it, but you can refer to -- you can draw
2 information from the Medicaid depositions, but you
3 can't have the people testify, nor can you quote
4 them.
5 MR. BLEAKLEY: Will that be in the order,
6 Your Honor?
7 THE COURT: Yeah, it's already out.
8 MR. BERNICK: So he can refer to the basic
9 facts that emerged, but he can't quote.
10 THE COURT: You can refer to the inferences
11 that you're able to draw from the random study of the
12 people that you've talked to, but not direct quotes
13 and not the individual testifying.
14 MR. BLEAKLEY: Okay.

15 MR. MONICA: Am I able to make reference,
16 Your Honor, to the fact that we did depose 13 people
17 and --
18 THE COURT: Sure, yes. And you can talk
19 about what came out of it generally without referring
20 to individuals.
21 MR. MONICA: All right.
22 THE COURT: Okay? Anything else?
23 MR. CIRESI: Just one other item.
24 THE COURT: Boy, it's hot in here.
25 MR. CIRESI: Yes, it is.

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1 THE COURT: Can anybody turn down the heat?
2 And that's got nothing to do with the case, I don't
3 think.
4 MR. CIRESI: This is just a housekeeping
5 matter. We're getting multiple lists of exhibits
6 from the defendants on the 48-hour and 24-hour rule.
7 THE COURT: Yes.
8 MR. CIRESI: And there should be one list
9 and one list only from the defendants, not, you know,
10 separate lists depending upon who's going to
11 cross-examine. Somebody else may have special
12 questions. We want one list from the defendants,
13 Your Honor.
14 THE COURT: Yeah, I think that's fair. One
15 list, and I know the -- and I believe the order is
16 also out on that, but there will not be multiple
17 cross-examinations. One cross-examination by one
18 attorney per witness. If you have additional
19 questions, you've got to provide it to the person in
20 charge of that cross-examination.
21 MR. STRICKER: Your Honor, if I may, Jim
22 Stricker on behalf of Liggett. Does that apply to
23 Liggett?
24 THE COURT: That applies to Liggett.
25 MR. STRICKER: All questioning of Liggett

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1 will be conducted by the other counsel?
2 THE COURT: That's correct. And if the
3 other defense counsel refuses to ask the questions,
4 then I'll reconsider, but you'll have to provide
5 those questions to me.
6 MR. BLEAKLEY: Judge, let me just follow up
7 on that.
8 THE COURT: Yeah.
9 MR. BLEAKLEY: In some cases there are -- I
10 take it your order means to include questions that
11 are specific to a client for someone other than the
12 one who's going to be doing the cross-examination.
13 THE COURT: Right.
14 MR. BLEAKLEY: It's a little hard for me to
15 do that.
16 THE COURT: You gentlemen have had a joint
17 defense or 40 years, you've got a joint defense
18 today, and I'm not going to have a witness subjected
19 to 11 different attorneys' cross-examination.

20 MR. BLEAKLEY: That won't happen in any
21 case.
22 THE COURT: Yeah. Well it's not going to
23 happen at all.
24 MR. BLEAKLEY: Yeah. We would -- believe
25 me, there would never be a case where there would be
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1 11 individual cross-examinations. But what if we
2 would be allowed to do is there would occasionally be
3 some supplemental cross-examination by one person?

4 THE COURT: If someone has supplemental
5 cross-examination, he gives it to the attorney that's
6 designated for the cross, and that attorney must ask
7 those questions.

8 MR. STRICKER: Once again with the joint
9 defense on Liggett's behalf, that's going to be just
10 a very difficult issue given the posture between the
11 defendants and Liggett. I would suggest it would be
12 very rare, frankly, that Liggett would be asking any
13 questions, and when they do it will be very minimal,
14 and I would request Liggett Your Honor reconsider and
15 allow us to do our own questions.

16 THE COURT: No. Submit the questions to
17 the counsel doing the cross. If he indicates he's
18 not going to ask the question, you may submit those
19 questions to the court and then I will rule on those
20 on an individual basis.

21 MR. STRICKER: Is it correct, Your Honor,
22 that if there were follow-up questions on that, on
23 the topic that Liggett was interested in, then it
24 continues submitting them to the defense counsel
25 asking the question?

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1 THE COURT: Yes, that's correct.
2 I don't mean to be rigid on this, but I am.
3 I've seen this -- I've done this too often, and I
4 can't -- I can't control -- our witness cannot be
5 controlled properly if he's subjected to people
6 coming from him in different directions, and so I
7 want you to designate who's going to do the cross on
8 a particular witness.

9 MR. CORRIGAN: Your Honor, on behalf of
10 B.A.T Industries, for the same reason we wished to
11 exercise a separate right to conduct voir dire, there
12 may be some very rare but possible instances in
13 which, because of unique issues pertaining to
14 Industries, I would like leave to be able to conduct
15 a short cross-examination of a witness that would not
16 be duplicative of anybody else rather than submitting
17 my client's questions through the persona of another
18 attorney. May I be permitted to do that on a
19 case-by-case basis? Should I make application to?

20 THE COURT: You'll have to make application
21 on a case-by-case basis, but before you do that
22 you're going to have to submit your questions to the
23 attorney designated for cross-examination, and then
24 you're going to have to show me that you won't be

25 able to follow it up. Because I'm trying to control
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1 the numbers here. We've got a lot of attorneys and
2 otherwise I'm concerned about losing control. I'm
3 more concerned about the witness being able to handle
4 different people coming from different directions.

5 MR. SVOBODA: Your Honor, that raises the
6 issue. Jerry Svoboda, I'm sorry, for B.A.T
7 Industries.

8 THE COURT: Yeah.

9 MR. SVOBODA: That leads to the next
10 pregnant issue which is final arguments, because in
11 my opening I would say I'm going to talk to them
12 again in final arguments, and if you're not going to
13 allow me to do that, I would like to know that now so
14 I don't make a mistake in my opening.

15 THE COURT: Okay. Have you discussed final
16 arguments?

17 MR. BLEAKLEY: No.

18 MR. WEBBER: That's a long way off.

19 THE COURT: Well you never know.

20 That's a long way off.

21 (Laughter.)

22 THE COURT: But counsel --

23 MR. CIRESI: Tell them you may be seeing
24 them in closing arguments.

25 THE COURT: If you want to talk about it

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1 and if you can agree on it, I'll listen to it.

2 MR. CORRIGAN: I think the problem --

3 THE COURT: I'm not closed on it.

4 Yeah.

5 MR. CORRIGAN: The problem is, Your Honor,
6 if we're not going to be allowed to cross-examine a
7 witness, it impacts the ability to make a closing
8 argument.

9 THE COURT: Oh, whatever happened to this
10 joint defense you guys have had for 40 years?

11 MR. BLEAKLEY: We don't agree on
12 everything.

13 THE COURT: You don't?

14 MR. BLEAKLEY: No.

15 THE COURT: All my rulings have been based
16 on the fact that you guys have had a joint defense
17 and you've agreed on everything.

18 MR. BLEAKLEY: Trust me, we don't agree on
19 everything.

20 MR. WEBBER: Judge, I don't want to prolong
21 this because I know we've still got the jury here,
22 but just quickly, the fact that -- let's say if it's
23 Mr. Bleakley who is cross-examining a technical
24 witness, there's no way in the world he knows my
25 hundred thousand documents for RJR Reynolds. He's

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1 learned a hundred thousand from Philip Morris. If
2 the witness raises some question about that, I take
3 it that Reynolds' counsel can't come up even on that
4 unique issue and do a little bit?

5 THE COURT: No. I think -- I had hoped
6 maybe by now you had learned that I only rule once.
7 You can bring ten motions, but I only rule once, and
8 whether it's right or wrong, that's my ruling and we
9 got to go with it. Okay? Let's get back.

10 MR. MONICA: Your Honor, I just wanted to
11 point out, my examination -- or pardon me, my opening
12 was going to be about an hour. Is that going to
13 cause difficulty with --

14 THE COURT: No. That's fine. And then
15 there was --

16 No one else is talking this afternoon; right?

17 MR. BERNICK: That's correct.

18 THE COURT: Okay.

19 (In-chambers proceedings concluded.)

20 (The following proceedings were held in
21 open court.)

22 THE CLERK: All rise.

23 (Jury enters the courtroom.)

24 THE CLERK: Please be seated.

25 MR. MONICA: May it please the court. Good

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1 afternoon, ladies and gentlemen. I introduced myself
2 a bit earlier, but I will introduce myself again. My
3 name is John Monica and I represent the Lorillard
4 Tobacco Company. I think I'm getting a little
5 feedback here. With me is David Martin, and David is
6 from the Doherty, Rumble, Butler firm here in St.
7 Paul, and together we will be representing Lorillard
8 in this action.

9 We will also be bringing to talk with you our
10 CEO, Dr. Spears. Dr. Spears, I believe, is
11 designated to be the eighth witness in this trial,
12 and he will be coming out to talk with you. Dr.
13 Spears has done work for the company about 40 years.
14 He's worked his way up as assistant research
15 director, then research director, and now he is CEO
16 with the company. Dr. Spears has a Ph.D., he's a
17 scientist, he has a Ph.D. in chemistry, and I think
18 he will be someone you will find very interesting.

19 Let me tell you a little bit about Lorillard
20 before I get into the main issue I'm going to discuss
21 with you today, and that main issue is advertising.
22 But just a bit, if I may, before we get on to that
23 subject about my company, the Lorillard Tobacco
24 Company. The Lorillard Tobacco Company is the oldest
25 tobacco company. It was originally founded in 1760

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1 by Pierre Lorillard, who was a French immigrant who
2 came to this country. He later passed this on to his
3 two sons, George and Peter. And Lorillard, as you
4 can see, has been around since before the Declaration
5 of Independence was signed. In fact, Lorillard

6 published probably what we believe is the first
7 advertisement on tobacco that was ever published in
8 this country, and that was in 1789. And Lorillard is
9 a relatively small company as far as tobacco
10 companies go; we are a distant fourth if you rank us
11 according to national sales. We are located in
12 Greensboro, North Carolina. We have about eight
13 percent of the national market for the sale of
14 cigarettes, and we're very proud of our products. In
15 fact, even though we are only fourth in the industry,
16 we do have the second best selling cigarette, and
17 that is Newport cigarette. Our major brands are
18 Newport, Kent, True and Old Gold. Those are the
19 major brands of cigarettes that we manufacture. We
20 do manufacture others, but I just mention those to
21 give you an idea of the major brands that we
22 manufacture.

23 We have been a very innovative company the years
24 we've been in the business. For example, we were the
25 first to use aluminum foil to wrap cigarettes in a

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1 package, and we were also the first to use the tear
2 tab that helps you open the packs of cigarettes when
3 you go to open them.

4 We have only one plant, and that's located in
5 Greensboro, North Carolina. We sell only one
6 product, and that is cigarettes. And we sell our
7 products here in the United States.

8 I would ask that you please do your best, as I
9 know you will, to keep in your minds separate
10 Lorillard from the other companies when the evidence
11 goes only to Lorillard, only to another defendant.
12 It's very important for you to keep in mind that we
13 are all separate companies, that we are presenting
14 our defense to you today at the request of the court
15 in a common sense, that we're not trying to duplicate
16 each other by each attorney getting up and asking
17 questions over and over again on the same subject,
18 but we are all separate companies and we have our
19 separate evidence, and I know you'll try to keep that
20 evidence separate and distinct in your minds.

21 Now let me go on and cover the subject that I
22 want to today with you, and that's advertising. Of
23 course this is a very important subject, and perhaps
24 the best way to start out is by reminding you of
25 something Mr. Bleakley just told you when he was up

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1 here, and that is this lawsuit is about money. That
2 is what the plaintiffs are seeking, they're seeking
3 money in this lawsuit. And over the years
4 advertising has been used by the tobacco companies,
5 as it has been by many industries, and in this
6 lawsuit plaintiffs are suing because we sold our
7 products here in Minnesota, and they're legal
8 products the evidence will show, and we sold them
9 with advertising, and we have warnings placed on
10 these products as we were required to do by law.

11 These were the rules of the game, if you will, under
12 which we operated. Society had told us if you want
13 to sell your product, you must sell it in a certain
14 fashion. It must have a warning. It will be heavily
15 regulated. We will be looking at you every step of
16 the way. And we sold our product under those rules
17 and regulations. We conformed to the rules and
18 regulations. We met our obligations, but now we find
19 ourselves in court being sued for just under two
20 billion dollars, as you heard today.

21 Now I'd like to point out that you'll see
22 reference to different types of advertising used by
23 the companies, but there have been no radio or
24 television ads for cigarettes for some 25 years, so
25 you won't -- if you -- if you want to see radio and

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1 cigarette -- radio and television cigarette ads you
2 have to go back 20 -- 25 years.

3 The warning on the pack of cigarettes that you
4 see on every pack of cigarettes has been around for
5 some 25 years, and I'd like for you to take a look at
6 that warning now. It's coming up on the screen now.

7 Now I have there a series of warnings, the
8 evolution of the warnings that you have seen over the
9 years on packs of cigarettes. Let me just take you
10 through them briefly. Since 1966 the warnings said
11 "Caution: Smoking may be hazardous to your health."
12 Then since 1970 the warning has said "The Surgeon
13 General has determined that cigarette smoking is
14 dangerous to your health." Then beginning in 1985 we
15 had four different types of warning -- warnings that
16 rotated, if you will, on the packs of cigarettes.
17 First one says "Surgeon general's warning: Smoking
18 causes lung cancer, heart disease, emphysema and may
19 complicate pregnancy." Second one right under that
20 says, "Quitting smoking now greatly reduces serious
21 risk to your health." The two on the right, top one
22 says, "Smoking by pregnant women may result in fetal
23 injury, premature birth and low birth weight." And
24 the final one says "Cigarette smoking contains carbon
25 monoxide."

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1 So you can see that the warnings were fairly
2 specific and forceful, and they were meant to be
3 to -- to allow people to understand what the risks of
4 smoking are. These warnings have been on every pack
5 of cigarettes since the dates shown, and also
6 warnings have been on all cigarette advertisements
7 after a period of time.

8 Now the proposal to ban advertising on
9 cigarettes first started originating during the
10 1920s, so this issue about advertising cigarettes has
11 been around for some 75 years, if you will. The
12 controversy has existed over the years, but as Mr.
13 Bleakley pointed out, society has determined that we
14 will be permitted to sell our product, it's a legal
15 product, and we will be permitted to advertise it.

16 You will see plaintiffs will bring to you some
17 old advertisements of cigarettes from bygone eras.
18 For example, I know that they will probably show you
19 some Kent advertisements, one of my client's
20 advertisements for Kent cigarettes, or some Old Gold
21 advertisements from many years ago. You need to keep
22 in mind that times have changed and advertising has
23 changed, just like you have to keep in mind society
24 has dramatically changed over this period of time
25 from the 1930s to now. For example, today we listen

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1 to -- or our kids listen to at least, I mean I know
2 mine do, people like Nirvana or Three-Eleven or David
3 Lee Roth or someone like that, but in older eras it
4 was Frank Sinatra, it was Glenn Miller, people like
5 that. The music has changed, society has changed,
6 advertising has changed. It is no longer proper,
7 appropriate to do what you did in the past, and we
8 know that and we have not done that. But when you
9 look at our old advertising, please keep in mind that
10 things have changed and remember it's not fair to
11 compare and contrast old advertising with today's
12 standards. And I'm sure you'll keep that in mind.

13 Now because of the warnings that I have up
14 there, we will show you that people have in fact
15 become aware, as Mr. Bleakley has pointed out, that
16 smoking can be injurious to your health according to
17 the Surgeon General. I would like to show you just
18 how people have become aware of this and show you
19 some of the old advertisements that -- old
20 advertisements that you'll be seeing for different
21 products so you can keep those in mind when you see
22 our products.

23 For example, here is a -- the first one I'd like
24 to show you is a traditional one for? I believe it's
25 Lustre-Creme shampoo. There is an advertising --

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1 advertisement from the past. That's Joan Crawford
2 advertising Lustre-Creme shampoo saying that the most
3 beautiful hair in the world uses that kind of
4 shampoo.

5 Next I'd like to show you another advertisement
6 showing Rita Hayward. She's always been one of my
7 favorites. Rita is advertising Lux soap. And if you
8 could read that fine print there, it would talk about
9 tests on skin performed by specialists and what those
10 tests reveal about the use of Lux soap. And of
11 course the soap is very heavily promoted in this ad,
12 as was true of that type of advertising for its day.

13 Next, let's go to some different types of
14 products just for a feel of the different type of
15 advertising you'll see from the past when you start
16 to compare them with advertising of the companies.
17 Let's show you some advertising for meat.

18 Now today meat, there's a controversy on meat as
19 to whether or not cholesterol, how much cholesterol
20 meat causes and what meat is bad for you. We have a

21 couple of advertisements here just to show you what
22 kind of advertising was being done in bygone eras for
23 meat. The first one is entitled "This is Life."
24 This is about a prime rib of beef, and I don't know
25 if you can read this over here -- I'll hold it up for

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1 you -- but these are the kinds of statements that you
2 were seeing in the past: "This is not just a piece
3 of meat, this is something a man wants to come home
4 to, something that children -- helps children to
5 grow, something that makes women proud of their
6 meals. This is a symbol of man's desire, his will to
7 survive, for as old as man's instinct to live is his
8 liking for meat, and to satisfy -- and it is
9 satisfied in his eating." Surely you would not see
10 this type of ad today advertising meat in this
11 fashion.

12 We have another one, and I won't belabor the
13 meat situation, but we have another one that I'm sure
14 you will admit that you would not see at all today,
15 and this one is about our old friend bacon. How many
16 ads are you going to see on bacon today? Here's what
17 it says -- I'll just read you a snippet from it so
18 you can get some feel for it. "Why do they say bring
19 home the bacon? Because bacon is the thing to bring
20 home. If you have bacon in the house, you have
21 hospitality and friendliness in the house and
22 something you can build a meal around. Bacon always
23 looks good to you even when you're ill, tired and
24 finicky. Bacon unlocks the gates of your appetite."
25 This ad is much different than you would see today,

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1 the point being that when you look at the cigarette
2 ads, please keep in mind that they have changed also.

3 Now let me just cover with you, if I may -- I
4 don't think we'll use any more of the ads -- some of
5 the regulations that the companies have been faced
6 with over the years so you can get a feel for just
7 how heavily regulated this industry is. Starting in
8 1955 the Federal Trade Commission banned any -- its
9 guidelines banned any advertisements, direct or
10 indirect, that were health related that the FTC
11 thought made health-related claims. This meant that
12 originally when the Federal Trade Commission first
13 spoke to the subject of tar and nicotine, that's what
14 I'm talking about, that the Federal Trade Commission
15 said you cannot mention anything about tar and
16 nicotine because its health related.

17 Now the Federal Trade Commission, as you may
18 know, is a federal commission created by Congress,
19 and it's -- one of its responsibilities is to review
20 what's going on in advertising and to take issue with
21 and prosecute people who advertise falsely. That's
22 one of its mandates. And the Federal Trade
23 Commission has been in existence since the early
24 1920s and it has followed advertising in this
25 country, including cigarette advertising. It has

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1 been the watchdog, if you will, for advertising
2 throughout the United States.

3 So in 1955 the FTC said -- and I'll refer to it
4 as the FTC -- said no advertising of tar and nicotine
5 to the tobacco companies. 1959, four years later,
6 the FTC came back and reaffirmed this, no tar and
7 nicotine advertising. However, we will see that in
8 years later the FTC made a complete flip-flop and
9 said now you must include tar and nicotine levels on
10 the package. And the FTC prescribed the method by
11 which these tar and nicotine levels were to be
12 measured; you have to measure them in a certain way
13 according to the FTC, and that is the way we measure
14 those, and that is what's on the pack of cigarettes.

15 Now going on with my chronology, in 1964 the
16 landmark Surgeon General's report came out that Mr.
17 Bleakley has talked to you about, the first Surgeon
18 General's report which talked about smoking and
19 health and the problems that could be involved with
20 smoking. Then in 1966, two years later, that's when
21 the Surgeon General started requiring these warnings
22 on cigarettes. Originally they were only on
23 cigarettes, and then subsequently they were also
24 required for all advertising, so when you see a
25 cigarette advertising in magazines and on billboards,

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1 you will see the same type of warnings on those types
2 of advertising.

3 Then in 1967 the FTC did its about-face and it
4 said that the companies had to begin putting tar and
5 nicotine levels, and it asked Congress to mandate
6 that companies put tar and nicotine levels on the
7 packs of cigarettes and on the advertising. And in
8 1971 the industry agreed to start putting tar and
9 nicotine levels on their advertisements, which they
10 have done.

11 1971, the same year radio and TV advertising was
12 stopped for cigarettes, that's some 25 years ago, a
13 year later in 1972 the industry agreed to put the
14 Surgeon General warnings on advertisements.

15 That brings us up to 1985, which is the last
16 date that I have there, where the new Surgeon General
17 warnings were disseminated, and we've used those
18 warnings since that time and they have been included
19 on every advertising and on every pack of cigarettes.

20 In addition to us having to deal with the
21 regulations, annual reports have been required. The
22 companies have had to file annual reports with the
23 FTC, giving the FTC certain information for the past
24 30 years. And in addition, the state of Minnesota
25 regulated tobacco also. As you may know, at one time

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1 the state prohibited the sale of tobacco, and then

2 the state through its legislature, the body that
3 should make public policy, changed its mind and
4 decided that it would be proper and legal to sell
5 cigarettes and advertise cigarettes. The state has
6 regulated tobacco, it has licensed the sale of
7 tobacco, and it has heavily taxed tobacco in this
8 state.

9 Today the oversight of the tobacco industry is
10 still very, very heavy and continues by different
11 governmental agencies. The Federal Trade Commission
12 still regulates, the Department of Health and Human
13 Services looks at what the tobacco companies are
14 doing and it requires a list of ingredients from the
15 companies on an annual basis. You have the OSHA
16 regulations, which are the indoor air regulations,
17 and you have the possibility of the Federal Drug
18 Administration regulating tobacco. That is something
19 that has been proposed and it's under review, and
20 that would be another step if it subsequently is put
21 into effect.

22 You may wonder why there has been a
23 turning-about, but you have to -- you saw reference
24 in some of the demonstratives and some of the
25 statements of Mr. Ciresi about attorneys being

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1 involved in the business of the tobacco companies, it
2 should not be any wonder that there are attorneys
3 involved in giving guidance to the tobacco companies,
4 just as there are attorneys involved in any business,
5 especially when you have such a heavily regulated
6 business.

7 The companies have complied with society's
8 mandates. The companies have included the notices,
9 they have stopped advertising on radio and TV, and
10 they have operated under what they thought was the
11 society's consensus for all participants, the state,
12 the tobacco government -- or the tobacco companies
13 and the federal government. We operated under these
14 mandates consistently over the years and, as I said,
15 now we find ourselves being sued for billions of
16 dollars.

17 Let's take a look at some of the statements that
18 were made by Mr. Ciresi about advertisements. We
19 will offer you an expert, Dr. Ronald Faber. He's
20 from the University of Minnesota, right here. He's a
21 full tenured professor of mass communications. He
22 has taught and researched advertising for 18 years
23 and he specializes in the subject of media impact on
24 children, so he's quite an authority and we're proud
25 to present him to you when we start presenting

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1 evidence. He will explain to you why people start
2 smoking. He will explain to you the impact that
3 advertising has on people's decisions to smoke. And
4 you will hear him tell you that people start smoking
5 because of peer pressure and because of family
6 influence. When you are younger, if your friends are

7 smoking, you tend to smoke. If your family members
8 smoke, you tend to smoke. These are the most
9 important factors in young people deciding to begin
10 to smoke.

11 Advertising is only one source of information
12 that anyone has, and advertising is a rather
13 impersonal medium. It is not something that is
14 personal to you, it's something you look up on a
15 billboard or you see in a magazine. The most
16 striking, if you will, the most important subjects
17 that you hear are from your loved ones, from your
18 friends and from your family. These are the subjects
19 that really make an impact on you.

20 Now Mr. -- or Dr. Faber will explain to you just
21 how cluttered the environment is that you see today
22 as far as advertising. He will explain to you that
23 on the average a person in one day's time will see
24 from three to six hundred advertisements. As you
25 drive down the street, as you walk through the

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1 skyways, you see advertisements for such companies as
2 the First Bank, Lifetime Fitness, St. Paul Hotel,
3 Miller Chevrolet. You see -- you're being bombarded
4 with all these advertisements and you see
5 approximately three to six hundred a day, but of
6 these you form -- the average person forms a mental
7 reaction to only 12 of these. Only 12 of these
8 really make an impression on you and you have a
9 negative reaction to a third of these, so only
10 approximately eight out of 12 even leave you with a
11 positive impression.

12 Dr. Faber will explain to you how this fact
13 impacts on advertising. Advertising has its place,
14 but advertising cannot cause people to -- to do
15 something that they don't want to do.

16 This is vividly shown by three ads that I
17 quickly want to show you. I'm now going to show you
18 three things that -- I want to show you things that
19 people don't drive, that people don't drink and that
20 people don't eat, because advertising did not do the
21 trick, advertising did not cause these products to be
22 successful.

23 MR. CIRESI: Your Honor, I'm going to
24 object. Excuse me, counsel. I'm going to object to
25 that statement. It's contrary to the court's order.

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1 THE COURT: Proceed, counsel.

2 MR. MONICA: Thank you, Your Honor.

3 You all remember the Edsel? "The Edsel look is
4 here to stay." Try to find an Edsel today. You may
5 find one in the field somewhere, you may find a
6 collector's item, but you'll not find an Edsel
7 and -- not find an Edsel on the street very often.

8 Here's another one. You remember Crystal Pepsi,
9 the Pepsi you could see through? This is another
10 product that is no longer around.

11 And thirdly, just to make the point, one of my

12 favorites is his McLean Deluxe, the hamburger, they
13 called it, and I think it had a bit of soy in it, I'm
14 not sure exactly, but this was McDonald's answer to
15 the health concerns of people. You will not find
16 this around even though millions of dollars were
17 spent on this product, the point being that
18 advertising can do a certain amount, can educate
19 people, but it can't cause people to do what they
20 don't want to do, and it doesn't cause people to
21 smoke.

22 And I think that this is definitely shown by
23 some studies that were done in foreign countries and
24 that our expert will talk to you about, Mr. Faber.
25 Again, let me put something up for you. Mr. Faber

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1 will talk to you about studies done in the countries
2 of Norway, Finland and Canada. These countries
3 instituted advertising bans, and if what people say
4 about advertising is true, that it causes people to
5 smoke, you would expect that smoking consumption
6 would go down in these countries. However, these
7 studies will show that in fact it did not go down,
8 that it either held constant or in fact it may have
9 even increased, and that's true of youth smokers
10 also.

11 So advertising, as I said, does have its place.
12 It can be utilized to promote your product, but it
13 will not cause people to use your product if they do
14 not want to do so anyway.

15 Now you may ask, well -- and I think Mr. Ciresi
16 raised this question -- if advertising doesn't cause
17 people to smoke, why do you advertise? That's a very
18 good question.

19 This is a very, very competitive business. You
20 may be number one today, but Chesterfield and Liggett
21 were, and you may be at the bottom tomorrow, and
22 that's where they're at today as far as sales. It's
23 a very competitive market. The companies compete
24 with each other vigorously for the smoker.

25 The two primary purposes of advertising in the
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1 cigarette industry are to promote brand loyalty and
2 to appeal to smokers who may want to switch brands.
3 By "brand loyalty" I mean this. We of course are
4 very interested in keeping people smoking Newports.
5 We don't want them to change to a different brand, we
6 don't want them to change to Kools. We advertise to
7 maintain brand loyalty in our smokers. Likewise, if
8 we can cause a smoker of Kools to switch to our
9 brand, to Newport, we certainly want to do that. So
10 we advertise to appeal to smokers, to get them to try
11 our brand. The same is true of Marlboros and Camels
12 and all the major brands of cigarettes, they're all
13 trying to hold their customers while at the same time
14 trying to get our or get somebody else's customers.
15 It's only natural; it's a competitive marketplace.

16 Studies will show and our expert will -- experts

17 will testify that about ten percent of smokers are
18 susceptible to switching cigarettes. Not everybody
19 will switch brands, but about ten percent of them
20 will at least consider switching brands, and that ten
21 percent, when you only have an eight percent market
22 share like Newport does, is very important. If
23 somebody took our eight percent, we'd be out of
24 business. And ten percent of a total population of
25 smokers are at least willing to listen and are

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1 considering switching brands. That's why companies
2 heavily advertise. And a one percent market share,
3 if you can just get a one percent shift, that is
4 worth hundreds of millions of dollars in sales.
5 There is your motive, that is your incentive to
6 advertise right there.

7 Tobacco/cigarettes operate in what we refer to
8 as a mature market, very mature market, and our
9 advertising experts will talk to you about this.
10 This is a market where everyone knows what the
11 product is, it's been around for years, and the
12 demand for the product is very stable or it's
13 actually declining, as in our situation. In these
14 markets the advertising does two things, it tries to
15 promote loyalty to your brand and to get people to
16 switch to your brand.

17 Let me give you some examples of other mature
18 markets. It might help you understand what I'm
19 talking about. Two examples are beer and toothpaste.
20 Beer is a very mature market. Everybody knows what
21 beer is, everybody knows the beer they like. You
22 cannot get people to start smoking -- or pardon me,
23 to start drinking beer because you advertise beer.
24 What the beer companies are trying to do is get
25 people to change to their brand of beer or keep them

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1 drinking Budweiser, keep them drinking Coor's beer or
2 whatever the case may be. The same is true of
3 toothpaste. Toothpaste operates in a very mature
4 market. No one starts brushing their teeth because
5 they see a toothpaste advertisement. They change
6 brands because they see a toothpaste advertisement.
7 The same is true of cigarettes. Cigarettes are
8 trying -- the tobacco companies are trying to get
9 people to either be loyal or to switch to them. I
10 think that you'll readily see this when our
11 advertising expert, Mr. Faber, is here and testifies.

12 Now some mention was also made about the amount
13 of money that the companies spend on advertising, and
14 we do, we spend quite a bit of money on advertising,
15 as do most major industries; however, we do not spend
16 as much as many, many other industries. And let me
17 just show you -- give you an example of what I'm
18 talking about.

19 If you compare what the tobacco companies spend
20 for advertising with some of the other industries, I
21 think you can kind of get an idea of where we fit in.

22 See the games and toys? Much, more than we spend.
23 In fact we're at the bottom of this particular chart.
24 You have dolls that are advertised much more. Motion
25 pictures, beverages and ice cream, all of these

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1 products are advertised much more than our
2 cigarettes.

3 Here's another graph that shows advertising. At
4 the top you'll see automotive, 11.5 billion dollars.
5 And this is a 1966 study -- or pardon me, 1996 study.
6 Entertainment and amusement is 5.4 billion dollars.
7 And there are cigarettes down at the bottom, .6
8 billion, which is, of course, 600 million.

9 So yes, we spend quite a bit of money on
10 advertising, but it's well in line with what other
11 industries spend on advertising also. In fact, if
12 you look at advertising as a whole across the
13 country, cigarette advertising accounts for less than
14 one percent of the total U.S. spending in
15 advertising, and this is a 1993 figure.

16 Now let's address for a moment the issue of
17 advertising to young people. Plaintiffs attack us
18 saying that we pander to, if you will, try to make
19 young people to smoke. Ladies and gentlemen, we do
20 not do that. There are -- they're attempting to
21 appeal to your passions, they're attempting to incite
22 you. This is a case, a lawsuit about money. The
23 money they are trying to collect is for adults who
24 have smoked. They are trying to collect money, they
25 contend, for medical services that they have to pay

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1 on behalf of adult smokers, not young people but
2 adult smokers. This is not a referendum, as Mr.
3 Bleakley told you, on smoking, whether or not you
4 think smoking is good or bad, this is a question of
5 whether the plaintiffs can collect damages, whether
6 or not they can show that health-care costs have been
7 increased because of the conduct of the defendants.

8 We will bring to you an expert, Dr. Everett
9 Morse. Dr. Morse is a sociologist from Louisiana
10 State University, has been a consultant to the
11 president, and he's an advisor to the public school
12 system there. He will explain to you why young
13 people begin smoking. And in this regard, ladies and
14 gentlemen, in this very lawsuit the court permitted
15 us to take some depositions of Medicaid recipients,
16 of the very people that plaintiffs are trying to
17 recover money that they paid on behalf of. We were
18 permitted to take the depositions of 13 persons from
19 the Minneapolis-St. Paul area. The plaintiffs were
20 present, we were present. These people volunteered
21 to come in and give their deposition. They spoke
22 freely and frankly under oath with both sides present
23 and both sides permitted to ask questions. These
24 people explained why they started smoking. They
25 explained they started smoking because of peer

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1 pressure and because of what their family and friends
2 were doing. When asked if they started because of
3 advertising, they said no, we did not start because
4 of advertising, we started because of the -- that's
5 what our friends were doing, that's what our family
6 members were doing. So we have taken those
7 depositions and we have heard from the people right
8 here in this area as to why young people start
9 smoking.

10 Now to go with that we'll offer the testimony of
11 Dr. Everett Morse, and Dr. Morse will testify about
12 how young people take risks, how young people
13 sometimes get excited about taking risks. I used to
14 take a few risks myself. As I get older and older, I
15 find I get more conservative and I won't jump off of
16 the high dive any more, maybe I'll jump off of the
17 low dive. There are certain things that I won't do
18 any more that I would do when I was younger. Dr.
19 Morse will explain to you how one-third of our young
20 people endanger themselves regularly by doing very
21 risky things such as using marijuana, drinking and
22 driving, having unsafe sex, carrying weapons,
23 different types of things that young people do.
24 Young people just do not perceive the risk that a
25 more seasoned person does, and they're willing to

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1 take risks. That is -- that is the mental makeup, if
2 you will, of a -- of a younger person. And you have
3 to put this in context when you look at why people
4 begin to smoke. They are risk-takers. They see the
5 message but yet they -- they think it just does not
6 apply to me and they go ahead and they do what they
7 want to do.

8 Now the companies do not target children and the
9 companies do not want children to smoke. In fact the
10 companies have taken specific steps to try to educate
11 children in not to begin smoking, and the proof of
12 this is this: Look at the advertisements that will
13 be shown to you. When you see some of these
14 documents that are flashed up on the screen, you'll
15 see some advertisements that came after these
16 particular documents and you'll see that regardless
17 of what somebody's bright idea was, what somebody's
18 concept was that they thought might work, you will
19 see that the companies did not advertise to youth.
20 In fact, the companies adopted a voluntary
21 advertising code by which they abided.

22 I seem to be having a little technical problem.
23 Let me try it again.

24 Okay. We're going to switch over to the
25 different -- to a different visual then.

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1 Here is the advertising code. We have it up on
2 the screen. Here's the introduction, and this is a

3 voluntary code that the companies adopted themselves
4 and that the companies abide by. "Cigarette smoking
5 is an adult custom. Children should not smoke. Laws
6 prohibiting the sale of cigarettes to minors should
7 be strictly enforced. The cigarette
8 manufacturers" -- excuse me. "The cigarette
9 manufacturers advertise and promote their products
10 only to adult smokers. They support the enactment
11 and enforcement of state laws prohibiting the sale of
12 cigarettes to persons under 18 years of age."

13 Now I'm not going to go through this entire
14 document, but I would just like to point out some
15 paragraphs to show you what the advertising code is.
16 Let's look at number -- paragraph number one.
17 "Cigarette advertising shall not appear in any
18 publications directed primarily to those under 21
19 years of age, including school, college or university
20 media (such as athletic, theatrical or other
21 premise), comic books or comic supplements," and B,
22 again "Cigarette advertising shall not appear on
23 billboards located within 500 feet of any elementary
24 school, junior high school or high school or any
25 children's playground."

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1 Skipping down to number three, and again you
2 will have this document in evidence to you to read in
3 its entirety, I'm just trying to point out some of
4 the paragraphs to you at this time. Number three,
5 "No one depicted in cigarette advertising shall be or
6 appear to be under 25 years of age." So we do not
7 use models that appear to be young; the models have
8 to actually be and appear to be 25 years of age.

9 Let's look at paragraph number five again.
10 "Cigarette advertising may picture attractive,
11 healthy looking persons provided there is no
12 suggestion that their attractiveness and good health
13 is due to cigarette smoking." Of course we use
14 attractive persons to sell our products, to advertise
15 our products. Any person, any company would. It is
16 the -- you -- you want to portray a person who is a
17 happy person and a person that people can identify
18 with, and so yes, we do use people who are happy and
19 who are using the product.

20 Number six talks about -- and I will just kind
21 of summarize it -- not using advertising that depicts
22 anyone engaging in a -- I'm jumping to the end
23 here -- a physical activity requiring stamina or
24 athletic conditioning beyond that of normal
25 recreation.

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1 Plaintiffs, I'm sure, will bring in some of our
2 ads and they will show some tennis players, some
3 golfers, things like this. This is normal
4 recreation. This is very consistent with the code.
5 So when you see these ads that they bring in, please
6 keep in mind that the code provides that we can
7 provide -- portray people enjoying normal recreation,

8 it's just intensely physical recreation that the ads
9 are not supposed to portray.

10 And again, just to save time and not read
11 everything, I'll just mention that we also have a
12 sampling code that is in paragraph one. A sampling
13 is where you hand out the samples of your product.
14 And paragraph number one says, "People who engage in
15 sampling shall refuse to give a sample to any person
16 whom they know to be under 21 years of age or who,
17 without reasonable identification to the contrary,
18 appears to be less than 21 years of age."

19 So this is the Cigarette Advertising Code which
20 the industry adopted itself and which the industry
21 has adhered to. But in addition to this code there
22 have been other programs that the industry has
23 instituted, and I just would like to mention a few of
24 those to you. And again, this will be in a document
25 that will be placed in evidence.

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1 This is a document put out by The Tobacco
2 Institute on behalf of the companies, and the
3 introductory paragraph clearly says, "The tobacco
4 industry has long taken the position that smoking is
5 an adult practice to be considered solely by mature,
6 informed persons. For this reason, the industry has
7 taken strict measures to assess -- to address,"
8 rather, "youth smoking. For example," and then it
9 recounts what the industry has done, "The tobacco
10 industry ended advertising and promotion in school
11 and college publications on campuses in 1963." Next
12 paragraph, "In 1964 the industry adopted the code,"
13 the code I just covered with you. And the -- as you
14 go on into the document, it -- it points out the
15 various programs that the industry has instituted.

16 Particularly I'd like to call your attention
17 down to the bottom of the first page here of the
18 program entitled "Do tobacco companies want kids to
19 smoke? No, as a matter of policy. No, as a matter
20 of practice. No, as a matter of fact." That was a
21 very heavily promoted campaign on behalf of the
22 industry.

23 On the next page there's another program
24 referred to as called -- referred to as the
25 "Responsible living program and helping you to

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1 decide, helping you to say no." This was a -- a
2 booklet put out for parents to discuss with their
3 children whether or not the children should smoke.
4 This was disseminated widely and it was -- the
5 program was expanded in 1986, two years later, and
6 actual grants were given under the community alliance
7 programs. More than 700,000 of these booklets have
8 been distributed nationwide.

9 But in addition to these general programs, there
10 have also been company-specific programs, and I would
11 just like to point out a couple of these programs to
12 you. One program is referred to "Right decisions,

13 right now," and this is a program that was instituted
14 by the R. J. Reynolds Company. That company makes
15 Camels. And this is a pamphlet, if you will, the
16 first page of a pamphlet about how to talk to your
17 kids about smoking even if you do, that means even if
18 you do smoke, and it again is a pamphlet for parents
19 to use with their children to discuss smoking.

20 You've heard many theories about what it takes
21 to keep young people from smoking, and I think we
22 realize that one answer is strict enforcement by
23 retailers of not selling to children, and the
24 companies have also realized this, of course, and
25 have instituted programs to deal with this specific

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1 avenue of dissemination. Again, the R. J. Reynolds
2 Company had another program called -- called "Support
3 the law, it works," and this is a program to help
4 retailers deal with the situation of young people
5 coming in and trying to buy cigarettes. And in fact,
6 under this program signs were distributed that could
7 be displayed in the retail premises -- it says,
8 "Support the law, it works. We check IDs." -- to let
9 young people know that they just cannot come in and
10 buy cigarettes, that their IDs will be checked.
11 These signs were disseminated to retailers in an
12 effort to help them deal with the youth smoking
13 problem.

14 In addition, there was a form circulated for use
15 by the retailer where the retailer could have his or
16 her employees sign this form acknowledging -- the
17 store clerk would acknowledge that they had been
18 advised of the program and that they had -- they had
19 agreed to check IDs of -- of people who looked like
20 they were under-age to make sure that they were of
21 legal age before cigarettes were sold to them. So
22 this was a program used by the R. J. Reynolds
23 Company. Other companies have used similar type
24 programs, and I'll not show you any more visuals of
25 those, but I would like to mention a couple or three

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1 programs by Philip Morris Company.
2 In 1995 Philip Morris instituted the "Ask first,
3 it's the law program," again directed at retailers.
4 The same year it instituted the "Action Against
5 Access" program for retailers. And in 1996 it
6 instituted the "Responsible Retailer Program," all
7 aimed at educating retailers and trying to get
8 retailers, who are the people of course on the front
9 lines, to be aware of the youth smoking problem and
10 try to get their cooperation in not selling to young
11 people.

12 The advertising that takes place today for
13 tobacco does so mainly through two mediums, and they
14 are billboards and magazines. Now studies will show
15 and our experts will testify that billboards are
16 designed to appeal to commuters, people who are
17 driving by. It's obvious. And in fact, there's so

18 little interest in young people, in trying to appeal
19 to young people through billboards, that the
20 billboard companies don't even keep statistics or
21 data on how many young people look at billboards. So
22 they're designed for adults, they're designed for
23 people who drive by.

24 Magazines, likewise the companies have a program
25 that they've instituted to only advertise their

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1 products in magazines that are not designed to appeal
2 to children. We do not advertise in teen magazines
3 and other magazines that are specifically designed
4 for children.

5 The companies use the same type of messages, if
6 you will, same type of advertising that you'll see in
7 other industries. They, of course, want to have
8 catchy slogans, something that you'll remember if
9 they can, such as some of the ones that have been
10 used in the past, "I'd walk a mile for a Camel." Or
11 "I'd rather fight than switch." Things of that
12 nature, things that you would remember. And by the
13 same token, they use images that they hope people
14 will remember, and again they -- they show healthy,
15 attractive people using their product and they use
16 images that are familiar to people.

17 For example, I'm sure that you are all familiar
18 with the Marlboro cowboy. However, other
19 companies -- other industries besides Marlboro uses
20 the cowboy. And I have an example here for purposes
21 to show you that there are other industries using the
22 type -- same types of advertising as we do. Here is
23 one for Digital Computer Company, cowboy lassoing a
24 horse. And here is -- I have one for Marlboro, very
25 similar type. Again the difference between the two,

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1 of course, is that big warning in the upper
2 right-hand corner that's on every tobacco
3 advertising. The Surgeon General's warning is on
4 every ad that is published.

5 You will hear, I'm sure you already have,
6 reference made to the Joe Camel cartoon-type
7 character. I'm not going to try to get into that and
8 explaining that to you, our expert will address that,
9 but I did want to point out to you that cartoon
10 characters are used to appeal to adults, and if you
11 think about it, you'll be able to think about many,
12 many products that have been advertised to adults by
13 using cartoon characters. Here are some examples
14 that I've put up on the board. Speedy Alka-Seltzer,
15 the Michelin tire -- I'm never sure exactly what this
16 figure was, but a tire -- the Exxon tiger, Garfield
17 the cat, who is used in Embassy Suites, you have the
18 Metropolitan Life Insurance using Snoopy, and you
19 have Owens-Corning Fiberglas using the Pink Panther.
20 And one that I think you probably will remember,
21 maybe a little closer to home, is the Hamm's beer
22 commercial; remember that little bear that was

23 beating on the tom-toms all the time? There is
24 obviously an adult product that used a cartoon type
25 character to appeal to adults. So it is not unusual
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1 to use these type of images to get your message
2 across.
3 Now before I close, I would just like to point
4 out something that I know we can expect you to do,
5 and that is to pay close attention to the documents
6 you are shown and to, before you make a judgment, ask
7 to see the entire document. Give the companies a
8 chance to explain how that document was written and
9 what's in it. Give the companies a chance to explain
10 what other documents go with that, because we saw
11 here today, frankly, an example of something that
12 could be very misleading. I'm sure Mr. Ciresi didn't
13 do it on purpose, probably didn't take the time right
14 now to look at this particular document, but he made
15 reference to a Lorillard document talking about
16 what -- who buys Newport cigarettes, and he made
17 reference to a statement made about that document,
18 about the base of our business is the high-school
19 student. He didn't tell you, however, this document
20 was written by a field man, a man out in the field
21 who had limited scope, limited view, and he was
22 writing to the president of the company with what he
23 thought was a great idea. He thought that Newport
24 should make a non-menthol cigarette that would
25 compete with Marlboro and he was trying to get his
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1 idea across and he made the statement in his letter.
2 Man out in the field, a field man. His job was to
3 call on stores, to go into stores and make sure they
4 were properly stocked, to make sure that they had the
5 proper displays of showing Newport. That was his
6 job. He wrote to the president of the company, gave
7 the president his views.
8 What we didn't see today, what we didn't hear
9 any made here was the formal company plan, the
10 marketing plan of the company that was written
11 approximately one year before this document that we
12 heard about today was written. This was the formal
13 five-year plan of Lorillard. Covered the period of
14 1977 through 1981. And that is a document we didn't
15 hear about today, and if we had heard about that
16 document, here's what that document says. It's
17 talking about Newports, and this was written by
18 people who know, this was written by people whose job
19 it is to know, who we market our products through.
20 These are the marketers, these are the people that --
21 that provide the document. Here's what that document
22 says written right at the same time, covers the same
23 period of time. "The target audience for the parent
24 brand will continue to be smokers 21 through 44 in
25 the core area with emphasis on young adults, blacks
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1 and women, who have all been important sources of
2 business in the recent period of growth. Copy will
3 continue to position Newport as a uniquely
4 pleasurable smoking experience for fun-loving,
5 easy-going adults. Promotion will capitalize on
6 Newport's superior product vis-a-vis menthol-prone
7 smokers, and surprising strength among Kool smokers,
8 with concentrated trial effort against the target
9 audience. My point being you need to put things in
10 context. You need to see all of the documents before
11 you make your minds up.

12 In closing, let me again end where I started,
13 and that is, as Mr. Bleakley did point out to you,
14 this is a lawsuit about money, about a couple of
15 billion dollars, that's a lot of money, a very, very
16 huge sum of money that the state and Blue Cross are
17 asking that we pay, that we pay because we operated
18 within the rules. We sold a legal product, we
19 advertised a legal product, we put the warnings on
20 our brands, on our packs and on our advertising. We
21 complied with the rules. The FTC scrutinized us
22 every day. Every day they looked at whatever
23 advertising we disseminated, and we complied with
24 everything the FTC told us to do. And now, even
25 though society says we can sell our product, we can

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1 advertise our product, even though that was the
2 agreement, even though that was the understanding,
3 we're being asked to pay two billion -- two billion
4 dollars.

5 Thank you.

6 THE COURT: Court will adjourn until 9:30
7 tomorrow morning.

8 (Court recesses.)
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